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United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record **FILED**

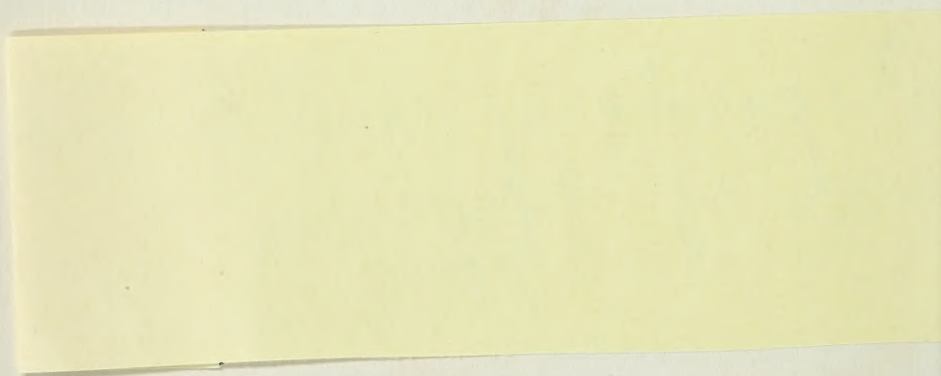
VOLUME V.

JAN 23 1913

(Pages 1601 to 2000 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Records of U.S. Circuit
Court of Appeals
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District of Idaho, Central Division.

(Testimony of Mrs. Martha E. Hallett.)

Q. Now, you don't remember whether you had a checking account there at that time or not? [1415—1085]

A. No, I wouldn't say positively, only I know I had money there.

Q. Do you remember whether or not he advanced you that money? A. No, he didn't.

Q. Do you have any idea how much money you had at the Lewiston National Bank at that time?

A. No, I don't.

Q. Have you any of your account books?

A. Well, I don't know whether I could look it up and find out or not, but I tell you, my money came in in collections, and I don't know. Sometimes, as I say,—

Q. Came in in what? Your money came in in what?

A. From collections—outstanding money from my husband's estate.

Q. And was all of your husband's estate deposited in the Lewiston National Bank? A. No.

Q. Do you mind telling us of what your husband's estate consisted? A. Do you mean the amount?

Q. Yes. A. Or what kind of—

Q. No—the amount.

A. I am not sure that I could do it.

Q. Well, approximately?

A. No. I might make a big mistake, Mr. Gordon; but I know that he left me a large estate, and I might say perhaps towards \$100,000.00. Now, you know, I can't tell you. You see, as I say, it was in

(Testimony of Mrs. Martha E. Hallett.)

outstanding—he left me a bank, and a grain business, and all that sort of thing; but I think, perhaps,—

Q. He left you a bank, you say?

A. A small, private bank.

Q. Where was the bank? [1416—1086]

A. Juliaetta, Idaho.

Q. Is that bank in existence now?

A. If it is it doesn't belong to me.

Q. And you say he left you what kind of a business—a grain business?

A. Yes. He left me, I think perhaps I should say something close to \$100,000.00, Mr. Gordon. I told you I wouldn't be anywhere exact about it.

Q. And have you that money now?

A. I think so.

Q. You say he left you a grain business?

A. Yes. Of course, I guess that is what they would call it.

Q. Well, what was it?

A. Have you heard of a tramway that was built up there at Juliaetta?

Q. No.

A. Well, it would be hard for me to tell you—most of the people here know about it—because there are warehouses both at the top and bottom of the hill, and there is a tramway to bring the grain from the top; and then they have a bank—a little bank.

Q. And was he the sole owner of that?

A. The sole owner.

Q. And have you that now?

A. Not very much of it. (Laughing.) But

(Testimony of Mrs. Martha E. Hallett.)

that's where my source of income has been from. That's what I say, I have my own money, Mr. Gordon.

Q. Did Mr. Kester conduct any of your business for you?

A. Mr. Kester has certainly done my business—oh, for a number of years. I went to him as a business man several years ago, in some of my complications.

Q. Have you ever sold your timber claim?

A. I never have. [1417—1087]

Q. Has anyone ever offered to purchase it from you? A. No, they never have.

Q. Have you ever given anybody an option on it?

A. No, sir.

Q. Have you ever authorized anybody to give an option on it? A. No one at all.

Q. How is that? A. No, I haven't.

Q. Have you paid the taxes on this land yourself?

A. I went the first year to the courthouse, and they told me I had a widow's exemption. I got no notice, but I went to the courthouse and told them I wanted to pay my taxes, and they said "Mrs. Hallett, you have no taxes to pay; you have a widow's exemption."

Q. Did I understand you to say that this is the only piece of property you own?

A. Yes, at present.

Q. Well, was it in 1905, when you went to the tax office?

A. Yes, I presume it was. I haven't had any property.

(Testimony of Mrs. Martha E. Hallett.)

Q. Well, what became of the bank and the grain business at that time?

A. It has mostly been dispersed.

Q. How is that?

A. I say the most of it had been dispersed.

Q. What am I to understand by that?

Mr. TANNAHILL.—It had been disbursed, she says.

WITNESS.—Well, to express it more slangily, I guess we have gone through with it and lost it one way and another.

Mr. GORDON.—Q. And when did your husband die?

A. My husband died in the winter of '93,—in holiday time, between '93 and '94.

Q. 1903, you mean? [1418—1088]

Q. The reason I asked that question is, I have been reading here in your examination at final proof that you said that you had had your money about a year, and that you had obtained it from your husband's estate.

A. Now, I can explain that. I had money out in notes. I had a large note in Portland, Oregon, and that estate had been in the courts for many years, and I had only got my money from that.

Q. And you didn't pay taxes at that time, and you never have paid any taxes on this timber claim; is that correct? A. On which?

Q. On the timber claim.

A. I think one year there was taxes paid.

Q. Who paid them?

(Testimony of Mrs. Martha E. Hallett.)

A. I was in Spokane at Mr. Kester's, and I got a notice of taxes to be paid—or you know, a tax notice—and I have never paid taxes on my claim, and he was coming to Lewiston, and I says, “Will you go to the courthouse and look to that for me?” and he says, “I will, Mrs. Hallett,” and I am not sure whether he paid the taxes that year or not; I wouldn't say that he did or say that he didn't. I asked him to go up and see after it for me, but this past year I went and looked at it and I have been away so long that I guess they thought I wasn't a resident of Idaho, and this past year I didn't pay any taxes.

Q. You didn't say anything to Mr. Kester at the time you asked him to pay your taxes about having an exemption?

A. Yes, I did; I says “I have been exempt, but I have got my notice, and I am afraid there is something wrong.” Anyway, I asked him to go and see about it, Mr. Gordon, for me; but whether he had to pay the taxes I have forgotten now.

Q. Do you ever remember of having a certificate of deposit at the Lewiston National Bank?

A. I have had. [1419—1089]

Q. Did you have one in 1904?

A. You know, as I told you, I don't remember.

Q. Do you remember the amount of the certificate of deposit you had there?

A. I have had different ones, so I couldn't tell you.

Q. Well, do you remember how many you have

(Testimony of Mrs. Martha E. Hallett.)

had? A. I don't know.

Q. One, or a dozen?

A. Oh, I couldn't tell you. I have had more than one, certainly.

Q. Do you remember the amount of those certificates? A. No.

Q. You have no idea of what the amount was?

A. No, Mr. Gordon, I haven't.

Q. I show you timber and stone lands sworn statement of Martha E. Hallett, dated April 25th, 1904, and ask you if you signed and filed that paper at the land office the date it bears?

A. I think it is. It looks like it.

Q. I show you the nonmineral affidavit of the same date, signed Martha E. Hallett. Is that your signature? A. Yes, sir.

Q. I show you the testimony of Martha E. Hallett, given on final proof, dated July 15th, 1904, and ask you if that is your signature to that paper?

A. Yes, I think it is.

Q. I show you the cross-examination of Martha E. Hallett given at the final proof, and ask you if that is your signature to that? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Martha E. Hallett, dated April 25th, 1904, the nonmineral affidavit of Martha E. Hallett, the notice for publication, the [1420—1090] testimony of Martha E. Hallett given at the final proof, the cross-examination of Martha E. Hallett taken at the same time, all of which papers have been identified by the witness, the testimony of

(Testimony of Mrs. Martha E. Hallett.)

the witnesses given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 15th, 1904, a certified copy of the patent issued to Martha E. Hallett, dated December 31st, 1904, all relating to the entry of lots 1, 2, and the east half of the northwest quarter of section 19, township 38 north, range 6 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission in evidence of any of the documents just offered, in support of bills No. 388 and 407, upon the ground that the entry is not involved in those two particular actions, and they are irrelevant and immaterial. And the defendants further severally object to the admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters relating strictly to the final proof, occurring long after the filing of the sworn statement, irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 44, 44A, 44B, 44C, 44D, 44E, 44F, 44G, 44H, 44I, 44J, 44K, 44L, and 44M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Hallett, at the time you filed your sworn statement had you any contract or agreement with Mr. Kester, or Mr. Kettenbach, or Mr. Dwyer, or anyone else, that you would sell them this land, or any interest in it? A. No, I didn't.

(Testimony of Mrs. Martha E. Hallett.)

Q. There was no understanding—

A. No understanding.

Q. —or agreement, either express or implied, to that effect, was there? [1421—1091]

A. No understanding at all.

Q. Or had you any such agreement at the time you made final proof? A. No.

Q. Have you ever had any such agreement with anyone? A. No, I never have.

Q. And as I understand it, you have never sold your land? A. I never have.

Q. I understood you to say, Mrs. Hallett, that your money that you paid for this land with was tied up in litigation in Portland for a while? A. Yes.

Q. And that litigation had just been settled about a year before you got the land?

A. Something like that. It was just beginning to come in, Mr. Tannahill, from that estate; it wasn't all paid in at one time.

Q. How much money was there in that estate?

A. The original—do you want me to tell you?

Q. Yes?

A. The original note was a \$10,000.00 note, and it had run until it was perhaps \$16,000.00 or \$17,000.00 at the time—well, yes, at the time it began to be paid in it must have been a good bit more than \$16,000.00.

Q. Who was that note against?

A. A. H. Johnson, of Portland, Oregon. The way it came, he died about three months after my husband, and that threw it in litigation, and William Ladd of the Ladd Bank was executor or adminis-

(Testimony of John H. Little.)

trator of the Johnson Estate.

At this time a recess was taken until two o'clock P. M. [1422—1092]

At two o'clock P. M., on Tuesday, September 6th, 1910, the hearing was resumed.

[Testimony of John H. Little, for Complainant.]

JOHN H. LITTLE, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John H. Little, is it not?

A. Yes, sir.

Q. Mr. Little, where did you reside in March, 1903? A. Lewiston, Idaho.

Q. And how old are you now? A. 31.

Q. And you were 24 at that time, were you?

A. Yes, sir.

Q. Were you married then? A. Yes, sir.

Q. How long had you been married?

A. At that time I think about—in March, 1903?

Q. Yes.

A. I had been married about one year—a little over.

Q. And what was your occupation then?

A. I was a clerk in The Beehive.

Q. That is a store? A. Yes, sir.

Q. A sort of a department store?

A. I was in the clothing department.

Q. Do you remember taking up a claim under the timber and stone act in March, 1903?

(Testimony of John H. Little.)

A. Yes, sir. [1423—1093]

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness in support of bills and actions No. 406 and 407, upon the ground and for the reason that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial.

Mr. GORDON.—Q. I show you the timber and stone lands sworn statement of John H. Little, dated March 20, 1903, and ask you if you signed that paper and filed it in the land office on or about the date it bears? A. Yes, sir; that is my signature.

Q. I show you the nonmineral affidavit of John H. Little of the same date, and ask you if you signed and filed that paper? A. I did, sir.

Q. I show you the testimony of John H. Little at the final proof, June 15th, 1903, and ask you if you signed that? A. Yes, sir.

Q. I show you the cross-examination of John H. Little given at final proof, June 15th, 1903. Is that your signature? A. Yes, sir.

Q. Mr. Little, do you know Mr. George H. Kester, one of the defendants in this equity cause which we are trying? A. Yes, sir.

Q. Do you know Mr. William F. Kettenbach, another of the defendants? A. Yes, sir.

Q. And Mr. Clarence W. Robnett?

A. Yes, sir.

Q. Did you ever talk with either or all of these gentlemen prior to making your initial application to enter a claim under the timber and stone act?

(Testimony of John H. Little.)

A. I talked to Mr. Robnett. [1424—1094]

Q. When and where was that conversation?

A. That was in the—the introduction of the conversation was in The Beehive, my place of employment.

Q. Now, who brought up the conversation?

A. Mr. Robnett.

Q. Now, state what he said.

A. He was in soliciting the different members of the force to take up a timber claim, and he came over and asked me if I wanted to take up a claim, and I told him that I couldn't afford to. He told me that that was all right; that he could make arrangements where I could afford to; and I asked him what he meant, and he said, "Well, what time do you get off for lunch?" and I told him, and he said, "I will see you outside," and I saw him out on the sidewalk and we finished the conversation out there, and he told me that he had arranged with a party or parties to advance the money, and I asked him if that wasn't a little dangerous, and he said, "Why, no; everybody in the country is doing that." He says, "I have got so and so," and named over some other parties "that has taken up claims"; and he said, "There are some more going in this afternoon, and," he said, "we would just like to have you go ahead and take up yours this afternoon."

Q. Now, was he to furnish all the money—all the expenses? A. Yes.

Mr. TANNAHILL.—We object to that as leading and suggestive.

(Testimony of John H. Little.)

WITNESS.—Yes, he was to furnish the money; and I told him I couldn't; I didn't have any money even to go up on the trip. He says, "Well, we will fix that all right," and he asked if I would go, and I said yes, and he says, "All right; you go home and get ready and go out on the three o'clock train"—the one that went up through Ahsahka,—and he came down and met me and told me to go into Thatcher & Kling's store, and Arthur Storer and I went in together, and if I remember right Fred. Kling gave me \$15.00. [1425—1095]

Mr. GORDON.—Q. Did you give him a note for it?

A. And he had a note all made out to Curtis Thatcher, \$15.00, and I signed the note, and so did Storer, and we went on up to the timber with Billy Benton and Ed. Knight, and I forget who else was in the party besides Storer and I.

Q. Now, let me ask you right there: Had you had any connection with Mr. Benton or Mr. Knight relative to a timber claim, or any arrangement with them, prior to this?

A. No, none whatever; Robnett arranged all that. I understood that Robnett was a partner in the locating business with them—

Mr. TANNAHILL.—We move to strike out what the witness understood, upon the ground that it is hearsay and a conclusion and not a statement of fact.

Mr. GORDON.—Well, you need not answer, if Mr. Tannahill objects to it.

Q. Did you go to this timber claim?

(Testimony of John H. Little.)

A. Well, we went back up in the mountains, away up the river some place, and stayed all night up to the cabin up there some place, and the next day we went out and plowed around through the snow a little bit, and the boys said "Well," they says, "this is about as far as we need to go."

Q. Who said that?

A. I think it was Knight. He says, "Your claim is number so and so."

Q. Did he tell you how far you were away from your claim?

A. No; he didn't say anything at all.

Q. Well, did you ever know how far you were from the claim?

A. No. He said the snow covered the stakes and he couldn't see the numbers. I asked him if it wasn't necessary to see the corners, and he says, "No," he says, "the snow is on the ground, and we don't have to see those stakes now," he says, "it is impossible." So we [1426—1096] turned around and went back and came on down and came back to Ahsahka that night.

Q. Now, what were you to do with this claim after you took it up? What was your arrangement?

A. Well, the understanding was that Robnett was to find me a buyer for the claim. He guaranteed to sell me the claim—to sell the claim for me.

Q. Did he tell you when he would sell it?

A. Why, he said the chances were favorable for an early sale; in fact, he guaranteed an early sale—a verbal agreement was all.

(Testimony of John H. Little.)

Q. Did he tell you whether or not he had anybody in mind, or was assembling claims?

A. No, not at that time he didn't, not until after we had proved up before he made any statement in regard to assembling claims.

Q. Now, did he tell you how much you were to get out of your claim? This is the first talk you had with him before you filed.

A. Well, when we came back he told me what a valuable claim I had got; I don't remember the amount, but he discussed it, and I felt very jubilant over the fact that I had got a good claim. I had taken his word for it was all.

Q. Now, did you have any money with which to take up a timber claim? A. No, sir.

Q. Of your own? A. No, sir.

Q. And when you came back from the timber region you say you saw Mr. Robnett again?

A. Yes, sir.

Q. Was that before you filed?

A. You mean before I made final proof?

Q. No. Before you made your filing did you see him again? A. Yes, I saw him. [1427—1097]

Q. Where did you see him?

A. I don't remember where I saw him that time before we made the filing.

Q. And do you remember who prepared the filing papers for you? A. I think John Nickerson.

Q. Now, do you know how you happened to go to John Nickerson's office? A. I was taken there.

Q. By whom? A. By Robnett.

(Testimony of John H. Little.)

Q. And did you have a description of this land, or did Robnett have a description?

A. He had the description.

Q. You never did have the description of it?

A. No.

Q. And did you pay Mr. Nickerson any fee at all?

A. No.

Q. And then you went to the land office and filed your sworn statement?

A. Yes, and he went up with us.

Q. And who paid the filing fee?

A. I don't remember now whether he handed me the money or whether he paid it; I don't remember that.

Q. You didn't pay your own money?

A. No, I didn't pay my own money.

Q. Do you remember whether anybody notified you when to make proof? A. Robnett notified me.

Q. Now, state what he said.

A. Well, he told me not to forget the day, and I said, "Well, I don't think I will," and he says, "Well, it is a certain day"—I don't remember now just what it was—and he came in the store the morning [1428—1098] of the day that we was to prove up and told me, "You had better go on over and we will get that thing fixed up."

Q. Where did you go?

A. We went on over and went into the bank.

Q. What part of the bank?

A. Well, we went in the main part, in the main entrance, and he went in behind the cage, and he

(Testimony of John H. Little.)

nodded for me to go on into the Directors' room, and we went on in there, and we had a talk in there, and he told me that—I asked him, even before this I asked him about Curt. Thatcher, if I would go to Curt. and get the money, and he says, “No; Curt. is unable to go through with this thing, but I fixed it with some other parties,” and he says, “they will take care of you all right.” So we went back in the bank and we had a talk there in regard to how the thing would go, and so he says, “You go on in the bank and I will draw the money for you,” and he went in and told—if I remember right it was Mr. Kester, to give me I think it was \$560.00, and—a little less than that, but the amount with what he had advanced me brought it up to \$560.00; and so he was standing over to the bookkeeper's window, and just as soon as I got the money he called me over there, and he says, “Now, give me \$125.00 for a location fee.”

Q. Who gave you this \$560.00?

A. George Kester.

Q. Did you give Kester a note for it? A. No.

Q. Did you give anybody a note for it?

A. Not at that time, no; it was later.

Q. Now, was Kester at the window or inside of the bank?

A. Well, he was in his accustomed place. Kester was Cashier, and he gave me the money.

Q. In cash? A. Yes, cash, in bills.

Q. And you went from there over to Robnett's?
[1429—1099]

A. To the bookkeeper's window, and paid him

(Testimony of John H. Little.)

\$125.00 location fee, as he called it.

Q. And then where did you go?

A. Then we went up to the land office.

Q. Now, who is "we"?

A. Well, he came out around there into the Directors' room and out through the door that opens into the stairway, and we went—the land office was upstairs then over the bank—and we went upstairs, and he told Mr. West there that he was ready to—that Mr. Little was ready to make his filing—his final proof, or something of the kind and we completed the proof there, and I paid the money.

Q. Four hundred dollars? A. Whatever it was.

Q. And that was the same money you had got from Kester? A. Yes, that I had got from Kester.

Q. And was there anything said when you were in the bank, or prior to going to the land office to make your proof, about what you should say when you went to the land office relative to where you had received the money?

A. Well, no more than I would expect from a locator instructing me about the methods of going through. I was very green in regard to the matter. He was telling me how it was to be handled.

Q. Now, do you remember when you went to the land office, when you were asked the question where you had gotten the money with which you made final proof or purchased the land, and how long you had had it in your possession, and what you said?

A. No, I don't remember. I know he told me—he had told me something in regard to try to show where

(Testimony of John H. Little.)

I was earning the money myself, and I asked him if it wasn't rather dangerous, and he said, "Oh, no; no, that thing is done every day."

Q. Do you remember this question being asked you: No. 17—this is cross-examination at final proof— [1430—1100]

Mr. TANNAHILL.—The defendants severally object to any evidence in relation to the giving of final proof, or questions that were asked at final proof, on the ground that it is irrelevant, incompetent and immaterial; and let this objection go to all questions in relation to the final proof.

Mr. GORDON.—Q. "Question. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I made it by selling property. Two months." Do you remember that?

A. No, I don't remember that part now.

Q. Well, if you made that answer that wasn't exactly in accordance with the facts, was it?

A. No, it wasn't.

Q. Then they gave you a final receipt when you paid that money in the land office, did they?

A. Yes, sir.

Q. And what did you do with that?

A. Robnett took it.

Q. And did you give a note that day, or later?

A. Yes, that day. He didn't let me get away till we went downstairs, and then he told me about the \$200.00 bonus.

Q. And you gave a note for how much?

(Testimony of John H. Little.)

A. Seven hundred and sixty dollars.

Q. Do you know to whom that note ran?

A. No, I don't remember.

Q. Do you know where the note is?

A. No, I haven't got it.

Q. And you delivered it to Robnett, though?

A. I delivered it to Robnett.

Q. Do you remember reading the note over?

A. Yes; that's where I found the joker about the \$200.00 bonus; [1431—1101] that's the first time I knew it.

Q. Do you remember who the payee in that note was? A. No, I don't remember.

Q. You don't remember to whom the note was payable? A. No, I don't.

Q. And you also gave a mortgage that day?

A. Well, that's what I am speaking of.

Q. Well, didn't you sign a note and a mortgage also?

A. Well, I can't say. I don't remember that.

Q. Have you your property now—that claim now, Mr. Little? A. No, sir.

Q. And to whom did you sell it?

A. Billy Kettenbach. That is, he was going to foreclose on the mortgage, and I told him I thought I had ought to have something out of it, and I got \$30.00.

Q. Who gave you that? A. Billy Kettenbach.

Q. Well, did you have a talk with him before you turned the property over to him, and tell him about your conversation with Robnett?

(Testimony of John H. Little.)

A. Yes, sir, and he told me he had nothing to do with what Robnett may have had to say in regard to that, because Robnett was in with some other interests on a deal of some kind to sell the timber, and they had been unsuccessful; the timber market was dead; and he couldn't wait any longer, he said, he had to have his money secured.

Q. And you made a deed to William F. Kettenbach? A. Yes, sir.

Q. And is that the only deed you ever made of the property?

A. Yes, sir. I say that I made a deed to William F. Kettenbach—I don't know; I don't remember how the thing was worded at all; I just remember signing a paper of some kind and getting the money.

Q. He is the man you transacted the business with?

A. At that time, yes. [1432—1102]

Q. And you made only the one deed?

A. That is the only business I had with Billy in regard to the matter.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of John H. Little, dated March 20th, 1903, the nonmineral affidavit of John H. Little of the same date, the notice for publication, the testimony of John H. Little at the final proof, and the cross-examination of John H. Little, taken at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 15th, 1903, a certi-

(Testimony of John H. Little.)

fied copy of said receiver's receipt, dated June 15th, 1903, and recorded in the office of the Recorder of Shoshone County, June 20th, 1903, at the request of W. F. Kettenbach, a certified copy of a mortgage made and executed by John H. Little and wife Edna F., June 15th, 1903, conveying to Clarence W. Robnett lot 1, and the west half of the northwest quarter and the southeast quarter of the northeast quarter of section 25, in township 39 north, of range 3 east, Boise meridian, to secure a note made by John H. Little June 15th, 1903, in the sum of \$760.00, payable to the order of Clarence W. Robnett in one year, with interest at the rate of one per cent per month, said mortgage being acknowledged June 15th, 1903, before John E. Nickerson, a Notary Public, and recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of William F. Kettenbach, June 20th, 1903. We also offer a certified copy of the patent issued to John H. Little, dated the 3d of August, 1904. We also offer in evidence a certified copy of a deed made and executed by John H. Little and wife Edna F., conveying to William F. Kettenbach, in consideration of one dollar, lot 1 and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section 25, in township 39 north, of range 3 east, Boise meridian, acknowledged October 24th, 1904, before H. K. Barnett, a Notary Public, and recorded at the request of W. F. Kettenbach in the [1433—1103] office of the Recorder of Shoshone County, Idaho, October 27th, 1904; all of said land

(Testimony of John H. Little.)

office papers and said patent relating to the entry of lot 1, and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section 25, township 39 north, of range 3 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to each and all thereof, in support of bills No. 406 and 407, upon the ground and for the reason that the entry is not involved in these two particular actions, and that they are irrelevant and immaterial. And the defendants further severally object to the admission in evidence of any of the final proof papers in support of either of the actions, upon the ground that they are matters relating to the final proof, and occurring long after the filing of the sworn statement, and are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 45, 45A, 45B, 45C, 45D, 45E, 45F, 45G, 45H, 45I, 45J, 45K, 45L, 45M, 45N, 45O, 45P, and 45Q.

Mr. GORDON.—Q. I will ask you, Mr. Little, whether you would have taken up this timber claim if it had not been for the proposition of Mr. Robnett that he would furnish all the money and guarantee you a sale of it?

A. No, I don't think I would, as I couldn't see where I could have made it.

(Testimony of John H. Little.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Little, how long did you keep your land after you made final proof before you negotiated a sale of it—before you talked of selling it?

A. Well, a short time afterwards I had a talk with Mr. Robnett in regard to it, and reminded him of his promise to dispose of it.

Q. What did he say? [1434—1104]

A. Why, he told me something about having a—forming a pool of the land, and he had included my claim in this pool. He said he knew I was anxious to sell, and he just included it in the pool, and he was going to see, I think, if I remember right, Tommy Brewer; that he had some customers—an Eastern man—on the string that was going to buy some land, and he would tell me more about it when he came back from a trip he was making to Portland; and when Robnett came back why he and I had some—well, a few pretty warm words, in regard to the fact that I thought he was not keeping his promise, and the time was drawing near for this mortgage to be due, and it was serious with me, and I thought I would have to pay for the mortgage or dispose of the timber.

Q. Now, did he say who was in that pool?

A. No, he didn't mention any names.

Q. He never mentioned Kester's and Kettenbach's names?

A. No, he never mentioned their names to me at any time.

(Testimony of John H. Little.)

Q. Now, how long before October 24th, 1904, was it before you talked to Mr. Kettenbach about buying?

A. Well, I talked to him up the street here, right about opposite this next corner, one night—stopped him in his rig, and I talked to him about it, and he said he didn't know anything about it, if I remember correctly; that he wasn't buying any timber; but to go ahead and see Clarence; he said, "Clarence is looking after that thing the best he can." He said he knew he was in some kind of a deal to dispose of some of the claims for the boys.

Q. Well, what boys?

A. Well, the boys around town here that were in that country up there where I was—Storer and myself and Mr. Benton and some others.

Q. Kettenbach told you to try to sell to someone else, didn't he?

A. Yes; he told me to try to sell to someone else. Well, I told him that Robnett claimed that according to our agreement he was to sell my claim for me, it was in the pool, and I couldn't see how I could sell to anyone else as long as it was in that pool. They explained to me [1435—1105] that the land was more valuable—that they could get more out of it—if the land was all together.

Q. Then, your arrangement with Robnett was not carried out? A. No, it was not.

Q. And did you say that Kettenbach told you that he had nothing to do with Robnett's deal, or the sale that Robnett was to make of the land, or something of that sort?

(Testimony of John H. Little.)

A. Well, yes, if I remember correctly. It is all so long ago that the deal nearly all has gone from my mind, except just the main points of the case.

Q. You had no contract or understanding or agreement, either express or implied, with Mr. Kettenbach or Mr. Kester or Mr. Dwyer, to sell them this land, before you filed your sworn statement?

A. No, sir.

Q. Or before you made your final proof?

A. No, sir.

Q. And nothing until more than a year after you made your final proof—October 24th, 1904,—some time about that time?

A. I don't remember the dates at all.

Q. About the time you executed the deed?

A. Yes, sir.

Q. Had you any contract or agreement, express or implied, to sell your land to Clarence Robnett, at the time you made your final proof?

A. Well, yes; I considered it such. He induced me to take up the claim on the promise of disposing of it for me.

Q. He was simply—

A. —guaranteeing the disposal of it.

Q. He was simply going to dispose of it to someone else?

A. Well, he never mentioned any names at all in regard to the matter.

Q. You knew that he wasn't going to buy it himself, did you not?

A. Well, I didn't think he could. I never had

(Testimony of John H. Little.)

that idea of it. [1436—1106]

Q. And the only thing he told you was that he would find a buyer for you for it, after you had proved up on it?

A. Yes. Yes, he guaranteed to find a buyer.

Q. He guaranteed to find a buyer? A. Yes.

Q. But he didn't do that?

A. No, he didn't do it.

Q. And that is the only understanding you had with him regarding it? A. Yes, sir.

Q. And your first arrangements were that this money was to be furnished by Curtis Thatcher?

A. Well, there was no arrangements made, that was my impression, because Curtis Thatcher advanced the first \$15.00 to make the trip up there.

Q. And then, about the time you made your final proof Robnett told you that Curtis couldn't go through with that? A. Yes.

Q. But he had other arrangements made for you to get the money? A. Yes, sir.

Q. And that is the only thing you knew—all that you knew about it?

A. That is all I knew about it, yes. [1437—1107]

Mr. GORDON.—I have a document here that I wish to offer. I offer in evidence a certified copy of the receiver's receipt issued by the land office to Bertsel H. Ferris, dated June 26, 1903, to lot 3 and the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 24, township 39 north, of range 3 east, B. M., recorded at the request of W. F. Kettenbach

July 1, 1903, in the office of the Recorder of Shoshone County, Idaho.

Mr. TANNAHILL.—The defendants waive any further identification of the document, but object to the admission of it in evidence so far as it relates to bills No. 388 and 407, upon the ground that it is immaterial and irrelevant, the entry not being involved in those two cases.

Said document was thereupon marked by the Reporter as Exhibit 46.

[Offer of Original Entry Papers of Hattie Rowland et al.]

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Hattie Rowland, dated April 25, 1904, filed in the land office at Lewiston, Idaho the same date, the nonmineral affidavit of Hattie Rowland, dated and filed the same date, the notice for publication of Hattie Rowland, the affidavit of Hattie Rowland dated April 25, 1904, the affidavit of Hattie Rowland dated July 18, 1904, the testimony of Hattie Rowland given at the final proof July 18, 1904, the cross-examination of Hattie Rowland taken at the final proof, the testimony of the witnesses given at final proof on the entry of Hattie Rowland, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 18, 1904, all being the original files of the United States land office, and relating to the entry of the S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, and the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 15, in township 38 north, of range 5 east, B. M. Also, a certified [1438—1108] copy of the patent to said described land, is-

sued to Hattie Rowland, and dated December 31, 1904.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all thereof, insofar as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in these two particular actions. And the defendants further severally object to the admission of any of the final papers in evidence in support of either of the actions, on the ground that they are irrelevant and immaterial; also, the two affidavits filed at the time of making final proof.

Said documents were thereupon marked by the Reporter as Exhibits 47, 47A, 47B, 47C, 47D, 47E, 47F, 47G, 47H, 47I, 47J, 47K, 47L, 47M, 47N, and 47-O.

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, relative to the timber and stone entry of William B. Benton, which consists of the sworn statement of William B. Benton, dated August 27, 1902, the notice for publication, the nonmineral affidavit of William B. Benton, dated August 27, 1902, the testimony of William B. Benton given at the final proof, November 21, 1902, the cross-examination of William B. Benton, taken at the same time, the testimony of the witnesses at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated November 21, 1902, all relating to the entry of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 15, in

township 39 north, of range 3 east, B. M. Also, a certified copy of the patent issued to William B. Benton for said last described tract of land, and [1439—1109] dated the 5th day of February, 1904. We also offer a certified copy of a deed made and executed the — day of January, 1912, by William B. Benton, conveying to C. W. Robnett the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 15, township 39 north, of range 3 east, B. M., acknowledged before Otto Kettenbach, a Notary Public for Nez Perce County, January 10, 1903, and recorded in the office of the Recorder of Shoshone County, Idaho, April 27, 1903, at the request of the Shoshone Abstract Company.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all of the documents so far as they relate to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants also severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 48, 48A, 48B, 48C, 48D, 48E, 48F, 48G, 48H, 48I, 48J, 48K, 48L, 48M, and 48N.

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Benjamin F. Bashor, which consists of the timber and stone lands sworn statement of Benjamin F. Bashor, dated

March 21, 1903, the nonmineral affidavit of Benjamin F. Bashor, of the same date, the notice for publication, the testimony of Benjamin F. Bashor at the final proof, dated June 17, 1903, the cross-examination of Benjamin F. Bashor at final proof, of the same date, the testimony of the witnesses at final proof, [1440—1110] and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17, 1903, all relating to the entry of lot 4 and the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ and the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 24, in township 39 north, of range 3 east, B. M. Also, a certified copy of the patent to said last described tract of land, issued to Benjamin F. Bashor, and dated August 3, 1904, We also offer a certified copy of the receiver's receipt issued to Benjamin F. Bashor June 17, 1903, in payment of the tract of land last-described, and recorded in the office of the Recorder of Shoshone County, Idaho, June 20, 1903, at the request of W. F. Kettenbach. We also offer a certified copy of a mortgage made and executed by Benjamin F. Bashor and wife Emma C., dated June 17, 1903, conveying to Clarence W. Robnett the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the S. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of section 24, township 39 north, of range 3 east, B. M., to secure a promissory note dated June 17, 1903, in the sum of \$550.00, executed by B. F. Bashor, and payable to the order of Clarence W. Robnett in one year, with interest at the rate of one per cent per month. Said mortgage is acknowledged before John E. Nickerson, a notary public for Nez Perce County, June 17, 1903, and recorded at the request of W. F. Kettenbach June 20, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to the admission of either thereof in evidence in support of bills Nos. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in these two particular actions. And the defendants further object to the admission in evidence of any of the final proof papers in evidence, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 49, 49A, 49B, 49C, 49D, 49E, 49F, 49G, 49H, 49I, 49J, 49K, 49L, 49M, 49N, and 49-O. [1441—1111]

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Pearl Washburn, consisting of the timber and stone lands sworn statement of Pearl Washburn, dated January 19, 1903, the notice for publication, the nonmineral affidavit of Pearl Washburn, dated January 19, 1903, the testimony of Pearl Washburn given at final proof, dated April 16, 1903, the affidavit of Pearl Washburn of the same date, the cross-examination of Pearl Washburn given at final proof, April 16, 1903, the testimony of the witnesses given at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated April 16, 1903, all relating to the entry of the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 27, in township 40 north, of range 4 east, B. M. Also, a certified copy of the patent to said last-described

tract of land, issued to Pearl Washburn, and dated the 2d day of July, 1904, We also offer a certified copy of the said receiver's receipt, issued to Pearl Washburn April 16, 1903, for the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 27, in township 40 north, of range 4 east, B. M., recorded in the office of the Recorder of Shoshone County, Idaho, at the request of W. F. Kettenbach, April 18, 1903. We also offer a certified copy of a mortgage made and executed by Pearl Washburn and Charles O. Washburn, her husband, April 16, 1903, conveying to W. F. Kettenbach the property last hereinbefore described, to secure a promissory note of even date to William F. Kettenbach, in the sum of \$400.00, which said mortgage was recorded at the request of W. F. Kettenbach April 18, 1903, in the office of the Recorder of Shoshone County.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in either of these actions. And the defendants further object to the [1442—1112] admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 50, 50A, 50B, 50C, 50D, 50E, 50F, 50G, 50H, 50I, 50J, 50K, 50L, 50M, 50N, 50-O, and 50P.

Mr. GORDON.—We offer in evidence the original

files of the United States land office at Lewiston, Idaho, of the timber and stone entry of James C. Evans, consisting of the timber and stone lands sworn statement of James C. Evans, dated March 24, 1903, the nonmineral affidavit of James C. Evans, dated April 24, 1903, the affidavit of James C. Evans, dated June 17, 1903, the testimony of James C. Evans given at the final proof, dated June 17, 1903, the cross-examination of James C. Evans at final proof, of the same date, the notice for publication, the testimony of the witnesses given at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17, 1903, all relating to the entry of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 25, in township 39 north, of range 3 east, B. M. Also, a certified copy of the patent to said last described tract of land, issued to James C. Evans, dated August 3, 1904. We also offer a certified copy of the receiver's receipt issued to James C. Evans June 17, 1903, and recorded in the office of the Recorder of Shoshone County, at the request of George H. Kester, August 10, 1903. We also offer a certified copy of a deed made and executed by James C. Evans June 17, 1903, conveying to William F. Kettenbach and George H. Kester the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 25, township 39 north, of range 3 east, B. M., which was acknowledged before H. K. Barnett, a notary public for Nez [1443—1113] Perce County, Idaho, June 17, 1903, and recorded in the office of the Recorder of Shoshone County, Idaho, at the request of George H. Kester,

August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all of the documents in so far as they relate to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, and irrelevant and immaterial. And the defendants also severally object to the admission of any of the final proof papers in evidence, upon the ground that the same are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 51, 51A, 51B, 51C, 51D, 51E, 51F, 51G, 51H, 51I, 51J, 51K, 51L, 51M, 51N, 51-O, 51P, and 51Q.

Mr. GORDON.—We also offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of George Morrison, consisting of the timber and stone lands sworn statement of George Morrison, dated March 30, 1903, the nonmineral affidavit of George Morrison, dated March 30, 1903, the notice for publication, the testimony of George Morrison given at the final proof, dated June 26, 1903, the cross-examination of George Morrison given at the final proof, of the same date, the testimony of the witnesses given at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 26, 1903, all relating to the entry of the NE. $\frac{1}{4}$ of section 22, in township 39 north, of range 3 east, B. M. We also offer a certified copy of the patent for the last described tract of land, issued to George Morrison, and dated August 3, 1904. We also offer

a certified copy of the receiver's receipt issued to George Morrison June 26, 1903, and recorded in the office [1444—1114] of the Recorder for Shoshone County August 10, 1903, at the request of George H. Kester. We also offer a certified copy of a deed made and executed by George Morrison and Mary A. Morrison, his wife, June 26, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of one dollar, the NE. $\frac{1}{4}$ of section 22, in township 39 north, of range 3 east, B. M., acknowledged before John E. Nickerson, a notary public of Nez Perce County, on the same date, and recorded at the request of George H. Kester in the office of the Recorder of Shoshone County August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of each thereof in evidence, in so far as they relate to bills 388 and 407, upon the ground that the entry is not involved in either of these actions, and irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence, in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 52, 52A, 52B, 52C, 52D, 52E, 52F, 52G, 52H, 52I, 52J, 52K, 52L, 52M, 52N, and 52-O.

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Edward M.

Hyde, consisting of the timber and stone lands sworn statement of Edward M. Hyde, dated March 30, 1903, the notice for publication, the nonmineral affidavit of Edward M. Hyde, dated March 30, 1903, the testimony of Edward M. Hyde given on final proof, dated June 26, 1903, the cross-examination of Edward M. Hyde at final proof, at the same [1445—1115] date, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 26, 1903, all relating to the entry of the NW. $\frac{1}{4}$ of section 22, township 39 north, of range 3 east, B. M. Also, a certified copy of the patent for said last described tract of land, issued to Edward M. Hyde, dated August 3, 1904. We also offer in evidence a certified copy of the receiver's receipt issued to Edward M. Hyde, dated June 26, 1903, and recorded at the request of George H. Kester in the office of the Recorder of Shoshone County August 10, 1903. We also offer in evidence a certified copy of a deed made and executed by Edward M. Hyde and Maud Hyde, his wife, June 26, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of one dollar, the NW. $\frac{1}{4}$ of section 22, township 39 north, of range 3 east, B. M., acknowledged before John E. Nickerson, a notary public of Nez Perce County, on the same date, and recorded in the office of the Recorder of Shoshone County, at the request of George H. Kester, August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to the admission of any of said documents in

evidence, in support of bills No. 388 and 407, upon the ground that the entry is not involved in either of the actions, irrelevant and immaterial. And the defendants further severally object to the admission of any of the final proof papers in evidence, in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 53, 53A, 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K, 53L, 53M, 53N, and 53-O. [1446—1116]

Mr. GORDON.—We also offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Robert O. Waldman, consisting of the timber and stone lands sworn statement of Robert O. Waldman, dated March 6, 1903, the nonmineral affidavit of Robert O. Waldman, of the same date, the notice for publication, the testimony of Robert O. Waldman given at the final proof, May 25, 1903, the cross-examination of Robert O. Waldman at final proof, of the same date, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated May 25, 1903, all relating to the entry of Lots 2, 3, 6, and 7, of section 30, in township 38 north, of range 2 east, B. M. Also a certified copy of the patent to said last described tract of land, issued to Robert O. Waldman, dated August 3, 1904. We also offer in evidence a certified copy of a deed made and executed by Robert O. Waldman and wife Maud M., dated May 26, 1903, conveying to Clarence W. Rob-

nett Lots 2, 3, 6, and 7, of section 30, township 38 north, of range 2 east, B. M., acknowledged before John E. Nickerson, a Notary Public of Nez Perce County, on the same date, and recorded at the request of the Shoshone Abstract Company in the office of the Recorder of Shoshone County, October 2, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all thereof, in so far as they relate to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants also severally object to the admission of any of the final proof papers in evidence, in support of either of the actions now pending, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 54, 54A, 54B, 54C, 54D, 54E, 54F, 54G, 54H, 54I, 54J, 54K, 54L, 54M, 54N, 54-O, and 54P.

An adjournment was thereupon taken until tomorrow at ten A. M. [1447—1117]

At ten o'clock A. M., Wednesday, September 7th, 1910, the hearing was resumed.

[Testimony of E. N. Brown, for Complainant.]

E. N. BROWN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Nathaniel Brown?

(Testimony of E. N. Brown.)

A. Yes, sir.

Q. What is your occupation, Mr. Brown?

A. I have been in the timber business.

Q. Are you connected with any timber company?

A. Yes, sir.

Q. Which one?

A. Clearwater Timber Company.

Q. In what capacity are you connected with it?

A. I have been looking after their business here, the woods part of it.

Q. Are you their resident agent here?

A. Well, not their resident agent, not in this town.

Q. Are you the state agent here?

A. No, I am their agent conducting their business.

Q. Well, you mean that they have an agent here according to the statute under which service of process may be made, you are not that gentleman?

A. No.

Q. But you are their business agent here?

A. Yes, sir.

Q. In the State of Idaho? [1448—1118]

A. Yes, sir.

Q. Do you do the purchasing for the Clearwater Company? A. Yes, sir.

Q. How long have you been engaged in that capacity for the Clearwater Timber Company?

A. Why, it has been eight years, in that capacity.

Q. I will ask you, Mr. Brown, whether or not you ever purchased, on behalf of the Clearwater Timber Company, the timber claim of one Soren Hansen, described as the southeast quarter of section 10, in

(Testimony of E. N. Brown.)

township 39 north of range 3 east, Boise meridian?

A. Yes, sir, I agreed to purchase it.

Q. State what that agreement was and who the dealings were with.

A. My dealings were with William F. Kettenbach.

Q. And when were they begun?

A. Well, sir, I couldn't tell you just exactly the date. It seems as though it was about two years ago, I believe.

Q. Was that deal ever consummated?

A. I don't think it was.

Q. Do you know why it wasn't? A. Yes, sir.

Q. Why?

A. I believe that there was a *lis pendens* filed against the patent.

Q. Against the claim?

A. Yes,—well, against the patent, or whatever it might have been.

Q. What else?

A. He came to me after—he said he had the papers ready for us, and asked me at the time if we would accept a deed of title with a *lis pendens* filed against the patent, or words to that effect, and I asked our attorney about it and he wouldn't accept it. [1449—1119]

Q. Who was your attorney? A. Mr. Babb.

Q. James E. Babb? A. Yes, sir.

Q. Did you ever file a deed conveying that property to the Clearwater Timber Company?

A. No, sir.

Q. Did you ever pay any money for that claim?

(Testimony of E. N. Brown.)

A. No, sir.

Q. Did you or your company ever make any claim of interest in that claim? A. No, sir.

Q. Have you ever paid taxes on it? A. No, sir.

Q. Now, you know that there is a deed of record, do you not, to the Clearwater Timber Company?

A. I do not, Mr. Gordon.

Q. You understand that there is one?

A. Yes, I have understood so.

Q. Now, do you know whether or not the Clearwater Timber Company made a deed reconveying that property to William F. Kettenbach, or someone he suggested? A. I do not.

Q. Didn't he discuss that matter with you?

A. Mr. Kettenbach?

Q. Yes. A. Yes, sir.

Q. Now, what did you do then?

A. I asked our company to make him a quitclaim deed.

Q. How long ago was that? [1450—1120]

A. Why, I think it was about four or five months ago; it was some time this summer, I think, or spring.

Q. Did you receive a reply to that communication from your company? A. Why, I think I did.

Q. Have you that correspondence?

A. I haven't it here; no, sir.

Q. Could you produce it?

A. If I have any I could, yes; we keep a file.

Q. Do you remember whether or not your company advised you that they would make that deed?

A. They advised me that it would be taken up with

(Testimony of E. N. Brown.)

Mr. Babb, our attorney; that is the last advice I had concerning the matter.

Q. Did you take it up with Mr. Babb?

A. I did; I spoke to him about it.

Q. Do you know why the deed was put on record to the Clearwater Timber Company?

A. I do not.

Q. Did you ever have any discussion with anyone else than Mr. William F. Kettenbach relative to the purchase of this timber claim?

A. No, sir, none except with our attorney.

Q. Did you ever talk with Mr. Clarence Robnett about it? A. No, sir.

Q. You had no dealings whatever with Mr. Hansen? A. No, sir.

Q. Mr. Brown, do you know Mr. William Dwyer, the defendant here? A. Yes, sir.

Q. In these cases? A. Yes, sir.

Q. Are you intimately acquainted with him?
[1451—1121]

A. I know him quite well, yes, sir.

Mr. BABB.—If you will excuse me, Mr. Gordon, just one moment before leaving the subject.

Mr. GORDON.—All right.

Mr. BABB.—I could make a statement there about the condition of those negotiations for securing the deed, to put in the record on that if you want it, the deed from Kettenbach to the Clearwater Timber Company.

Mr. GORDON.—I would prefer for you to put it in as a part of your case, Mr. Babb.

(Testimony of E. N. Brown.)

Mr. BABB.—All right.

Mr. GORDON.—I will ask you, on the record, if Mr. Babb will produce the deed from the Clearwater Timber Company to William F. Kettenbach.

Mr. BABB.—I will, if you will allow me to submit a statement at the time as to the terms on which I hold the deed. I can show you a letter of instructions.

Mr. GORDON.—All I want is the deed, so that I will know what the record is, Mr. Babb.

Mr. BABB.—I will produce the deed with the letter of instructions, with the statement that I have never delivered it and never completed my investigations; that is the way the thing stands.

Mr. GORDON.—All right.

Mr. BABB.—I would like to say further, Mr. Gordon, that when Mr. Hansen testified the other day I had no idea that that pertained to this deed; I didn't know when Mr. Hansen was testifying that the deed had any pertinency to his claim. For that reason it was a couple of days before I found that deed, and I looked it up and found the instructions they sent with it. If you want it, I will produce it, but I would like at the same time to offer a statement. I think you wouldn't object to my making an explanation so that it will be clear.

Mr. GORDON.—No, not at that time, no objection at all. [1452—1122]

Q. In the purchases that you make for the Clearwater Timber Company, Mr. Brown, you pick out a piece of property that you feel it would justify you

(Testimony of E. N. Brown.)

in buying for them, and submit that to your attorney, Mr. Babb, to find out whether or not the title is good, and whether you should purchase it, is that correct?

Mr. BABB.—I object to that as immaterial, with reference to the course of business at the present time. I didn't examine the titles at the time these titles that are involved in these cases were acquired, so that the present custom would be immaterial.

Mr. GORDON.—Q. Well, you would submit the proposition to your attorney as to whether or not you could legally purchase these claims, is that correct? A. Yes, sir.

Q. At all times since you have been purchasing?

A. Yes, sir.

Q. Who else has been the attorney that you submitted them to, besides Mr. Babb?

A. Mr. Davies, of Spokane.

Q. Is he an attorney?

A. I don't know whether he was an attorney or not. I was authorized to send all deeds and abstracts to him before we purchased.

Q. Then how were the payments made on these?

A. Whoever was selling the claim was authorized to go to any bank they saw fit and leave their papers, deeds and abstracts, and I would leave a draft there with it on Mr. Davies, when he was in Spokane.

Q. You draw the drafts yourself on Mr. Davies?

A. Yes, sir.

Q. And, as I understood, you did nothing of that kind with this claim to which we refer?

(Testimony of E. N. Brown.)

A. No, sir. [1453—1123]

Q. Now, with reference to the question I asked you about your acquaintance with Mr. Dwyer, has that acquaintance been intimate?

A. I have known him very well for a long time.

Q. And your acquaintance has been social as well as in a business way? A. Principally social.

Q. And you are acquainted with Mr. William F. Kettenbach? A. Yes, sir.

Q. And Mr. George H. Kester? A. Yes, sir.

Q. Do you remember of the time that they were being tried at Moscow on the conspiracy charges?

A. Yes, sir.

Q. And you remember of the occasion of their being convicted, do you not? A. Yes, sir.

Mr. TANNAHILL.—I object to that, and move to strike out the answer as incompetent, irrelevant and immaterial, and object to all evidence along this line, upon the ground that it is immaterial.

Mr. GORDON.—Q. And you also know, do you not, that Mr. Dwyer was convicted at Moscow in the fall of 1906 on a charge of subornation of perjury?

Mr. TANNAHILL.—The same objection.

Mr. BABB.—The same objection, and because there is better evidence.

A. I remember of them being convicted, but I don't remember what year.

Mr. GORDON.—Q. You knew that it was some offense growing out of their land and timber transactions, did you not? A. I presume it was.

Mr. BABB.—The same objection. [1454—1124]

(Testimony of E. N. Brown.)

Mr. GORDON.—Q. And you also know that at the trial that was had in the spring of 1907, at which Mr. Kettenbach and Kester and Dwyer were convicted, that they were also in connection with their timber transactions?

Mr. BABB.—The same objection.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. You knew that at the time, didn't you? A. Yes, sir.

Q. Mr. Brown, did you purchase the timber claims of Joel H. Benton and William B. Benton for the Clearwater Timber Company?

A. I couldn't tell you from those names.

Q. I will read the description of them. The Joel H. Benton claim is the south half of the southwest quarter and the south half of the southeast quarter of section 15, township 39 north of range 3 east, Boise meridian.

A. I think we own that.

Q. Did you do the purchasing of them?

A. Yes, sir, if it has been purchased.

Q. And the William B. Benton claim is the south half of the northwest quarter and the north half of the southwest quarter of section 15, township 39 north of range 3 east, Boise meridian.

A. Yes, sir, I think we own both of those.

Q. And you purchased them? A. Yes, sir.

Q. The deed was made to the Clearwater Timber Company in September, 1907, by Elizabeth White?

A. Yes, sir.

Q. Do you remember, relative to those transac-

(Testimony of E. N. Brown.)

tions, who you conducted the business with?

A. Yes, sir; I think it was with William F. Kettenbach. [1455—1125]

Q. You negotiated the purchase of them with him?

A. Yes, sir.

Q. Do you remember whether or not those claims were paid for by a draft given by you?

A. They were.

Q. And were the drafts made to Mr. Kettenbach?

A. No, sir; they were made to the Lewiston National Bank; they were drawn on Mr. Davies, of Spokane, at that time.

Q. You knew no one else in the transaction but Mr. William F. Kettenbach? A. No, sir.

Q. Do you remember purchasing the claim of William Haevernick and the claim of Alma Haevernick, to the south half of the southeast quarter of section 23, and the north half of the northeast quarter of section 26, township 37 north of range 2 east, and the southwest quarter of the northeast quarter of section 26, township 37 north of range 2 east?

A. I don't remember any circumstances connected with it, Mr. Gordon.

Q. Well, the deed runs from Frank W. Kettenbach to the Clearwater Timber Company?

A. Yes, sir.

Q. Do you remember having any dealings with him relative to those claims?

A. Yes, sir, with Frank W. Kettenbach.

Q. And you settled up with him for those?

A. Yes, sir.

(Testimony of E. N. Brown.)

Q. Do you remember purchasing the claim known as the Geary Van Artsdalen claim?

A. No, I do not. [1456—1126]

Q. Would you know it better by the description?

A. Why, I might know it, Mr. Gordon.

Q. It was the northeast quarter of section 25, in township 37 north of range 5 east.

A. I think we own that claim.

Q. Do you remember whether you negotiated for that?

A. I don't remember anything about the negotiations for that.

Q. The deed is dated December 2d, 1905.

A. I can't remember.

Q. Do you remember of purchasing the Pearl Washburn claim? A. No, sir.

Q. Would you know that by the description?

A. No, I don't suppose I would, Mr. Gordon. I probably know whether we own it or not.

Mr. BABB.—It was purchased from Chapman.

WITNESS.—Yes, I remember that.

Mr. GORDON.—Q. Do you remember that?

A. Yes, sir.

Q. Through whom did you conduct the negotiations? A. Through the Lewiston National Bank.

Q. Whom did you see in connection with it?

A. Mr. Chapman and Mr. Kettenbach, I believe.

Q. William F. Kettenbach? A. Yes.

Q. Do you remember the Drury M. Gammon claim? A. No, sir.

Mr. GORDON.—I don't guess you do, because

(Testimony of E. N. Brown.)

you haven't that. That is all, Mr. Brown. [1457—1127]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Brown, do you remember, at the time you purchased these two Benton claims through Mr. Kettenbach that was deeded to you by Elizabeth White, do you remember there was some other claims you purchased at the same time?

A. From Mrs. White?

Q. No, you purchased some other claims from other parties that Mr. Kettenbach was handling the entire matter, and you sent a draft to the Lewiston National Bank in payment for all the claims and Mr. Kettenbach disbursed it?

Mr. BABB.—I object to evidence concerning the drafts, because the drafts are better evidence, and I will have them here in a little bit.

A. I don't remember, Mr. Tannahill; I can't recall any claims just now at the same time.

Q. You have no personal recollection of them?

A. No.

Mr. TANNAHILL.—That is all.

By Mr. BABB.—Q. Mr. Brown, I hand you two deeds from Elizabeth White to the Clearwater Timber Company, dated September 4, 1904, and ask you to look at them and state whether those are the purchases from Elizabeth White to which you referred in your direct examination.

A. I believe they are.

Mr. BABB.—I will ask the stenographer to mark

(Testimony of E. N. Brown.)

those for identification.

Said deeds were thereupon marked by the stenographer as Defendants' Ex. "P," for identification, and Defendants' Ex. "Q," for identification. [1458—1128]

Mr. BABB.—Q. I show you two drafts, each dated September 9, 1907, to the order of the Lewiston National Bank, on demand, for the sums respectively of \$1,200.00 and \$1,600.00, each drawn by you on F. J. Davies, Spokane, Washington, and ask you to look at those and state what relation those drafts, if any, have to the purchase evidenced by the deeds which I last showed you?

A. I believe they were made in payment for those deeds.

Mr. BABB.—I will ask the stenographer to mark those for identification.

Said drafts were thereupon marked by the stenographer as Defendants' Ex. "R," for identification, and Defendants' Ex. "S," for identification.

Mr. BABB.—Q. I will ask you to state what, if anything, you had to do with the purchase of those properties conveyed to the company by Elizabeth White, by the deeds which I showed you?

A. What I had to do with the purchase?

Q. Yes.

A. Why, I had,—I purchased them, at an agreed price, and notified Mr. Kettenbach to have the deeds drawn up and the abstracts completed to date, and to place them in the bank, and that I would make a draft on Mr. Davies to accompany the deeds, and

(Testimony of E. N. Brown.)

if he passed upon the title the draft would be paid.

Q. Those drafts which I showed you are the drafts you made? A. I believe they are, yes, sir.

Q. And were the deeds made and the abstracts placed in the bank? A. I presume that they were.

Q. Did those deeds and abstracts go along with the draft to Mr. Davies? A. I presume they did.

[1459—1129]

Q. Who examined the title as to those properties when they were purchased? A. Mr. Davies.

Q. I was not at that time examining titles for the company? A. No, sir.

Q. You knew you were purchasing those claims from Elizabeth White rather than from W. F. Kettenbach, did you not?

A. Yes, sir; I was told that they were Mrs. White's claims.

Q. By whom? A. By Mr. Kettenbach.

Q. You knew the relationship between Mrs. White and Mr. Kettenbach? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. How long had you been living, or were you then living in Nez Perce County?

A. I don't think that I was. What year was that?

Q. That was September, 1907.

A. I don't think I was living here then, was I?

Q. I don't know.

A. Well, I had just come then.

Q. Where had you lived prior to that time?

A. Moscow, Idaho.

Q. Had you ever lived in Nez Perce County?

(Testimony of E. N. Brown.)

A. Before that?

Q. Until you moved down from Moscow?

A. No, sir.

Q. Had you ever done business of any account in Nez Perce County?

A. No; very little directly in this county. We had selected a good deal of timber in this county, but we didn't have much business in Lewiston other than to file selections.

Q. Did you know at the time you made those purchases from [1460—1130] Elizabeth White that she acquired those properties either from Benton, one of them from W. B. Benton, the other from Joel Benton, or that the title passed through C. W. Robnett? A. No, I did not.

Q. Did you examine the abstract of title at all?

A. No, sir.

Q. What was the course of the company's business in acquiring properties with reference to the examination of abstracts at that time?

A. Just as it is now; when the purchase of a piece of timber or land from any person, they are authorized to put their deeds in a bank, wherever they choose, and we have permission to examine them, for our attorney to examine those deeds and abstracts, and if they are returned to us with the attorney's opinion satisfactory, we place them back in the bank and make a draft for the amount on St. Paul.

Q. At that time you had no attorney, as such, making the examination, however, other than Mr. Davies, had you? A. Not that I know of, no, sir.

(Testimony of E. N. Brown.)

Q. Is Mr. Davies an attorney, or simply an experienced real estate man?

A. I couldn't tell you whether he was an experienced real estate man or not; he was passing on those titles, is all I know about him. He was in the timber business himself.

Q. Did you have any written communications with Mr. Davies concerning the acquisition of those properties from Mrs. White that you remember of?

A. I don't remember of any.

Q. Did you ordinarily, in the ordinary course of business, when the drafts went forward?

A. Why, yes, we had more or less correspondence, not as much as you and I have by any means. I would write him from time to time about different things concerning titles that he had returned on account of some error or something of that kind; that is about all. [1461—1131]

Q. Unless he returned them for correction in some particular there were no communications between you? A. No, sir.

Q. The only communication he would receive would be the draft through the bank, and the abstract and the deed? A. Yes, sir.

Q. Had Mr. Davies ever done business in this county and lived here? A. No, sir.

Q. Or in Latah County?

A. No, sir. I believe, though, that he came down here once with me and stayed over a day; that was in 1901.

Q. He was not acquainted with the people through

(Testimony of E. N. Brown.)

this country here? A. No, sir.

Q. Either in Latah County or Nez Perce County, acquainted with the people and what they were doing? A. No, sir.

Q. And you were not, generally, in Nez Perce County, prior to the time you came here to reside?

A. No, sir.

Q. Except in so far as you had business in the east end, and after its annexation to Shoshone county?

A. No, sir.

Q. Do you know whether those drafts that you drew on Mr. Davies were honored there and paid, and the deeds delivered to the company?

A. Yes, I presume they were; I didn't hear any more from them.

Q. You were never called on to honor the draft?

A. No, sir.

Q. Because of its being dishonored?

A. No, sir. [1462—1132]

Q. At that time did you know W. B. Benton and Joel Benton?

A. I knew one Benton, but I couldn't tell you whether it was W. B. or Joel.

Q. Did you know the particulars as to any criminal proceedings in the United States District Court in Idaho, at that time, as to the properties involved, the particular entries involved, of persons who had made the entries?

A. No. No, I don't believe I did; I didn't know any of those people that were involved in that personally, that is, the people that took up the claims.

(Testimony of E. N. Brown.)

I didn't know any of them.

Q. Had you seen any of those indictments?

A. No, sir, not to read them; I never read any of them.

Q. Did you have any knowledge concerning them, other than current rumor?

A. No; that is all. I was away nearly all the time that those trials were going on, the grand jury meetings, and so forth.

Q. Did you know or did you have any information at the time of the purchase of those claims from Mrs. White that they figured in any way in the matters involved in those criminal indictments?

A. No, sir.

Q. I show you a deed from John E. Chapman to the Clearwater Timber Company, dated June 7, 1907, and ask you to state whether that is one of the purchases you referred to in your examination-in-chief.

A. Yes, sir, I believe it is.

Mr. BABB.—I will ask the stenographer to mark this deed for identification.

Said deed was thereupon marked by the stenographer as Defendants' Ex. "T," for identification.

Mr. BABB.—Q. I show you a draft, dated June 7th, 1907, for \$8,650.00, drawn by you in favor of the Lewiston National Bank, on F. J. Davies. State what, if any, relation that draft bore to the deed which I last showed [1463—1133] you.

A. I presume it is in payment of that deed.

Q. I will ask you to state—

A. Yes, that is in payment of that deed.

(Testimony of E. N. Brown.)

Q. I will ask you to state what, if anything, you had to do with the purchase evidenced by that conveyance from Chapman to the Timber Company.

A. I purchased it.

Mr. BABB.—I will ask you to have that marked as a defendants' exhibit for identification.

Said draft was thereupon marked by the stenographer as Defendants' Ex. "U," for identification.

Q. What was the manner of handling that purchase, with reference to—

A. The same as—

Q. The details of closing the deal up?

A. The same as they were before.

Q. That is before,—you refer to the purchases made from Elizabeth White?

A. Well, the same as the testimony I gave before. We agreed on a price, and the deeds were placed in the bank, with instructions to have the abstracts brought down to date, and when they were complete the bank was to send the deeds to Mr. Davies, in Spokane, with a draft for \$8,650.00, and if he passed on the deeds as being satisfactory the draft was to be paid.

Q. Did Mr. Davies make any objection to the Chapman claim as far as you remember?

A. I don't know.

Q. The title was acquired by the company?

A. Yes, sir.

Q. And the draft was paid? A. Yes, sir. [1464—1134]

Q. That you drew? A. Yes, sir.

(Testimony of E. N. Brown.)

Q. Did you examine that abstract of title that was submitted with that deed? A. No, sir.

Q. And went on to Mr. Davies? A. No, sir.

Q. Did you know what the chain of title was, as to who the entryman was, and the subsequent owners?

A. No, sir.

Q. Did you have any information at that time that that property was in any way involved in any criminal proceedings pending in the United States Court, to which reference has been made in the direct examination? A. No, sir.

Q. Did you have any information that the title was involved in any way, such as is alleged in the bill of complaint, by the government in this case?

A. I didn't understand you.

Q. Did you have any information at that time concerning the existence of any charges against the validity of that title, such as are made by the Government in this case? A. No, sir.

Q. Did you have any such information with reference to the Elizabeth White claim? A. No, sir.

Q. I show you a deed from Frank W. Kettenbach and wife to the Clearwater Timber Company, dated the 18th of June, 1907, and ask you to examine that and state whether that is one of the purchases that were referred to in your direct examination.

A. Yes, sir. [1465—1135]

Q. I will ask you to state what, if any, connection you had with that purchase. A. I purchased it.

Q. I will ask you to state, in a general way, how the details of the transaction were conducted on be-

(Testimony of E. N. Brown.)

half of the timber company.

A. Mr. Kettenbach and myself agreed upon a price for this land, and I instructed him to place the deeds, with the abstract complete, in the bank, and when that was done notify me and I would make a draft on Mr. Davies, of Spokane, in payment for the same.

Q. I show you a draft here, dated July 9th, 1907, in favor of Frank W. Kettenbach, drawn by you, in the sum of \$800.00, on Mr. Davies, and ask you if that is the draft you refer to? A. I believe that it is.

Q. Was that draft paid? A. Evidently.

Q. The company acquired the title, did they?

A. Yes, sir.

Mr. BABB.—I will ask the stenographer to mark the deed for identification, and also the draft in favor of Kettenbach.

Said deed was thereupon marked by the stenographer as Defendants' Ex. "V," for identification; and said draft was marked Defendants' Ex. "W," for identification.

Q. Did you examine this abstract of title that was submitted with the deed from Frank W. Kettenbach to the company? A. No, sir.

Q. Were you at that time acquainted with William Haeavernick and Alma Haeavernick?

A. No, not acquainted with them, but I knew of them.

Q. Were you then familiar in any way with what William Haeavernick and Alma Haeavernick were doing? A. No, sir. [1466—1136]

Q. Did you at that time, at the time of the drawing

(Testimony of E. N. Brown.)

and payment of that draft, have any information that the title conveyed by the deed from Frank W. Kettenbach was in any way questioned by the Government of the United States? A. No, sir.

Q. I show you a deed from Geary Van Artsdalen, G-e-a-r-y V-a-n A-r-t-s-d-a-l-e-n, to the Clearwater Timber Company, dated December 2, 1905, and ask you to state if that is the conveyance from Van Artsdalen referred to in your direct examination?

A. I believe it was.

Mr. BABB.—I will ask that that be marked for identification.

Said deed was thereupon marked by the stenographer as Defendants' Ex. "X," for identification.

Q. I will ask you to state what, if anything, you had to do with the purchase from Van Artsdalen evidenced by that deed.

A. I evidently purchased that claim.

Q. In what way was that purchase made, as to details of making and closing up the transaction?

A. I don't remember anything about the details, but if we purchased it, it was done in the regular way; the deeds and abstract were placed in the bank, with instructions to be forwarded to F. J. Davies, at Spokane, for examination, and the draft accompanied the deed.

Q. Did you know Geary Van Artsdalen at that time? A. No, sir.

Q. You came in contact with him in making this purchase? A. No, sir.

Q. Did you have any information at that time that

(Testimony of E. N. Brown.)

the title to the property described in his deed was in any way questioned by the Government of the United States? A. No, sir. [1467—1137]

Q. How much was it that was paid him for that property? A. I don't remember.

Q. Have you got the draft that you drew on Mr. Davies? A. No, sir.

Q. For that purchase? A. No, sir.

Q. Do you know what has become of it?

A. I do not.

Mr. GORDON.—Have you it, Mr. Babb?

Mr. BABB.—No, I haven't that draft; I haven't been able to locate that. I have all the others here.

Q. The title to the Van Artsdalen property was examined by Mr. Davies only, so far as you know?

A. So far as I know.

Q. The Soren Hansen property referred to in your direct examination, there was never any abstract of title to that submitted for examination to the attorney, was there? A. Not to my knowledge.

Q. And that claim, as a claim by itself, was never submitted to the attorney, was it?

A. I couldn't tell you; I don't know.

Q. I will ask you whether you do not remember that the question was simply submitted to the attorney whether titles in that condition or in which *lis pendens* had been filed in an equity suit by the United States Government to set aside title, whether titles in that condition could be purchased under any arrangement satisfactorily?

A. Yes, I had a conversation of that kind with you.

(Testimony of E. N. Brown.)

Q. And that is the conversation referred to in your direct examination, is it not? A. Yes, sir.

Q. And that was not with reference to the Soren Hansen claim, his name was not mentioned, was it?
[1468—1138]

A. No, sir; not to my knowledge.

Q. It was simply a certain number of claims?

A. Yes, sir, any claim.

Q. That might be in that condition?

A. Yes, sir.

Q. You didn't have any conference with me with reference to the purchase from Mrs. White or from Van Artsdalen, or from Chapman, or any of those, with respect to which you testified to your drawing drafts on Davies? A. No, sir.

Q. At that time I was not examining titles for the company? A. No, sir; not to my knowledge.

Mr. BABB.—You asked, Mr. Gordon, about the Gammon property. Does your abstract there show that this is in the Clearwater Timber Company?

Mr. GORDON.—No, I think it shows that it is either in the Idaho Trust Company or the Lewiston National Bank.

Mr. TANNAHILL.—In the Lewiston National Bank.

Mr. GORDON.—It has, since these proceedings, been deeded to the Idaho Trust Company.

Mr. BABB.—Q. Your business for the Clearwater Timber Company has been chiefly the making of purchases in a general way, as you described it?

A. Yes, sir.

(Testimony of E. N. Brown.)

Q. And generally looking after their land?

A. Yes, sir.

Q. After it is acquired? A. Yes, sir.

Q. Tending to the matter of forest fires, and leasing, wherever leases are made, and the payment of taxes, and so forth? A. Yes, sir. [1469—1139]

Q. Although for a few years you haven't had anything to do with the payment of taxes directly?

A. Not any more than they are sent into our offices to be checked over.

Q. The lists are sent there as a matter of routine as they are being made up? A. Yes, sir.

Mr. BABB.—I guess that is all.

Redirect Examination.

(By Mr. GORDON.)

Mr. GORDON.—Have you the deed now that I have asked for, Mr. Babb?

Mr. BABB.—Yes.

Mr. GORDON.—Are you going to offer this deed?

Mr. BABB.—No, not now, alone. I am willing to offer it when I can make a statement to go with it. I will make it now if you wish.

Mr. GORDON.—I wish you would, or I can offer it, and you can make any statement you see fit afterwards, just after I offer it.

Mr. BABB.—Of course, I am not taking testimony here. It might not be competent.

I have a deed, dated July 12, 1910, from the Clearwater Timber Company to W. F. Kettenbach, a quitclaim deed, which was sent to me by the Clearwater Timber Company from St. Paul, with a statement, in

(Testimony of E. N. Brown.)

effect, that they were not advised whether it was proper to deliver this deed, and that they wished me to look into the circumstances, if I was not aware of the circumstances, and find out whether it was proper to deliver it, and to deliver it if I saw fit to do so. I was not aware of the circumstances, and I held the deed for investigation, and am still holding it for that purpose, and have never delivered it. The deed is in words and figures following, to wit: [1470—1140]

THIS INDENTURE made this 12th day of July, 1910, between the Clearwater Timber Company, a corporation created under the laws of the State of Washington, the first party, and W. F. Kettenbach, the second party, WITNESSETH

THAT WHEREAS a conveyance from the second party to first party of the land hereinafter described was placed of record by mistake

NOW THEREFORE in order to clear the title of said second party to said real property, said first party, in consideration of One Dollar (\$1.00) to it in hand paid, receipt of which is hereby acknowledged, hereby quit claims to said second party his heirs and assigns forever any title and interest of said first party acquired by said conveyance from said second party, of, in and to, the Southeast quarter of Section ten (10) Township thirty-nine (39) North, Range Three (3) East of the Boise Meridian, in Nez Perce County, Idaho.

IN WITNESS WHEREOF said first party has caused this instrument to be executed by its Pres-

(Testimony of E. N. Brown.)

ident and Assistant Secretary and its corporate seal to be affixed the day and year first above written.

CLEARWATER TIMBER COMPANY,

By J. A. HUMBIRD,

President.

[Corporate Seal] By W. H. FARNHAM,

Assistant Secretary.

State of Minnesota,

County of Ramsey,—ss.

BE IT REMEMBERED that on this 27 day of July, 1910, before me, the undersigned Notary Public in and for said Ramsey County, personally appeared J. A. Humbird, President, and W. H. Farnham, Assistant Secretary of the Clearwater Timber Company, each known to [1471—1141] me to be the President and Assistant Secretary respectively of said Timber Company, the corporation who executed the foregoing deed, and each of them, and they acknowledged to me that the said corporation executed *and* foregoing deed.

Given under my hand and notarial seal the day and year first above written.

[Notarial Seal] CHARLES W. FARNHAM,
Notary Public, in and for the County of Ramsey,
State of Minnesota.

My commission expires September 25th, 1916.

[Endorsed]: Deed from Clearwater Timber Company to William F. Kettenbach. Dated July 12th, 1910. [1472—1142]

Mr. GORDON.—That is the signature of J. A.

(Testimony of E. N. Brown.)

Humbird, the President of the Clearwater Timber Company?

Mr. BABB.—Yes.

Mr. GORDON.—And it is stipulated that the deed is properly acknowledged, and so forth?

Mr. BABB.—Yes, but not executed, because that implies delivery.

Mr. GORDON.—But it is signed by the President and acknowledged, and you hold it for delivery?

Mr. BABB.—No, not necessarily for delivery. It is for me to determine whether it should be delivered, as the company's attorney, and I came to the conclusion, on hearing the testimony here the other day of Mr. Hansen, that it should not be delivered.

Mr. GORDON.—And this letter, dated July 28th, 1910, addressed to James E. Rabb, signed Clearwater Timber Company, by W. H. Farnham, Assistant Secretary, that accompanied the deed, and has reference to that deed?

Mr. BABB.—Yes. It states in there that he represented that I was aware of the transaction. That, of course, is erroneous. I was not, any more than I had been asked with reference to an uncertain number of claims, not with reference to this particular one, whether they should be purchased while this *lis pendens* was pending.

Mr. GORDON.—I shall offer this letter in evidence, and ask that it be read into the record, and returned to Mr. Babb.

Mr. BABB.—That is all right.

(Testimony of E. N. Brown.)

The above-mentioned letter is as follows:

[1473—1143]

J. A. HUMBIRD,
207 National German-American Bank Bldg.
ST. PAUL, MINN.

July 28th, 1910.

Mr. James E. Babb,
Lewiston,
Idaho.

My dear Sir:—

We are enclosing you a deed from the Clearwater Timber Company to W. F. Kettenbach duly executed by the officers of the company.

This deed as you will note covers or conveys SE. $\frac{1}{4}$ of Sec. 10 Town 39, Range 3 E.

E. N. Brown sends us this deed for execution with an explanation of why it should be so deeded and informs us you are aware of the circumstances leading up to our having the title thereto and why it should be deeded back to Mr. Kettenbach.

We are sending this to you with the request that if the matter is regular and proper you may deliver it to Mr. Brown or if you do not understand the matter you make inquiry and if you are satisfied it is right and proper deliver the deed but if not return to this office with your reasons why it should not be so delivered.

Very truly yours,
CLEARWATER TIMBER COMPANY.

By W. H. FARNHAM,
Asst. Sec'y. [1474—1144]

(Testimony of E. N. Brown.)

Mr. GORDON.—Q. Now, Mr. Brown, the Hansen claim had been submitted to you for purchase, had it?

A. Yes, sir.

Q. And I understood you to say that Mr. Will. Kettenbach had taken that up with you?

A. Yes, sir.

Q. And in going over the matter you found that it was in a *lis pendens*, is that correct?

A. I didn't find that out.

Q. Who found it out for you?

A. Mr. Kettenbach informed me.

Q. And after submitting that matter, together with some others, to your attorney, you declined to purchase it, and as I understood, nothing was paid on it at all, nothing whatever? A. No, sir.

Q. Then, did Mr. Kettenbach ask you to have this deed made that has been offered here?

A. Yes, sir, some time after that.

Q. When did he first ask you about that, do you remember?

A. Why, it was quite a long time after we had talked about the claim; I had forgotten about it.

Q. In fact you didn't know the deed was on record? A. No, sir.

Q. And you didn't put the deed on record?

A. No, sir.

Q. How long ago has it been that he asked you for another deed reconveying the property to him?

A. Well, I believe it was just before they had those bank trials, somewhere along there.

(Testimony of E. N. Brown.)

Q. You mean just before the grand jury proceedings? [1475—1145]

A. I don't remember when it was; it was some time, one day, I think, along about the time they commenced to have their bank trouble, or about that time.

Q. You mean this last spring?

A. No; it must have been—

Q. Last fall?

A. When they had their first bank troubles.

Q. Then you wrote a letter to the President of your company, stating that the deed had been put on record by mistake, is that correct?

A. Well, I don't remember what I said; yes, it must have been put on by mistake. I wrote him that the land didn't belong to us. I don't remember the details about what I did write him about that particular piece of land.

Q. Now, do you know where this deed was prepared?

A. I never saw that deed, Mr. Gordon.

Mr. GORDON.—I read from the letter here that Mr. Babb has—

Mr. BABB.—I prepared that deed, at Mr. Brown's request, Mr. Gordon.

Mr. GORDON.—The letter reads: "E. N. Brown sends us this deed for execution with an explanation of why it should be so deeded and informs us you are aware of the circumstances leading up to our having the title thereto and why it should be deeded back to

(Testimony of E. N. Brown.)

Mr. Kettenbach.” That was practically the effect of your letter?

A. Yes.

Q. Now, I note from reading from the deed which has been read into the record a recital that whereas a conveyance from the second party to first party of the land hereinafter described was placed of record by mistake,” and, as I understand, Mr. Rabb, you say you prepared that deed?

Mr. BABB.—Yes. [1476—1146]

Mr. GORDON.—Q. I assume from that, then, that you conveyed that intelligence to Mr. Babb, that that was a mistake?

A. That we didn’t own the property, never had paid for it.

Q. Do you remember why it was that you were asked to have this land quitclaimed to William F. Kettenbach? Did he say he wanted it quitclaimed to him?

A. Yes; if we weren’t going to pay for it he wanted the claim back.

Q. He wanted it reconveyed to him?

A. I believe so, words to that effect, something of the kind.

Q. In other words, it wasn’t just your own suggestion that it be reconveyed to Mr. Kettenbach?

A. I didn’t know it had been recorded.

Q. But I mean, when you had your talk with Mr. Kettenbach, before giving instructions for this quitclaim deed to be prepared, which was afterwards forwarded to the company, that was done in accord-

(Testimony of E. N. Brown.)

ance with the instructions or request of Mr. Kettenbach, Mr. William F. Kettenbach? A. Yes, sir.

Q. And it was he who told you he wanted it quit-claimed back to him? A. Yes, sir.

Q. Now, you have, or there has been presented to you the drafts with which was purchased all the claims except the Van Artsdalen claim?

A. Yes, sir.

Q. Now, did you deliver those drafts to Mr. Babb?

A. No, sir.

Q. Have you made any search or inquiry for the draft that paid for the Van Artsdalen claim?

A. No, sir.

Q. Now, with whom did you negotiate for the sale of the [1477—1147] Van Artsdalen claim?

A. Well, sir, I don't remember who it was; I never knew—

Q. You say you never met Mr. Van Artsdalen?

A. No, I don't think I ever did. If I did, I didn't know it.

Q. Do you remember whether that transaction was closed at the Lewiston National Bank?

A. I don't think it was; I don't remember.

Q. What makes you think it wasn't closed there?

A. Well, because he,—from conversation only, when this claim came up, this Van Arsdalen name came up, I asked Fitzgerald who he was, and Fitzgerald told me he lived up in the country somewhere; I don't remember what explanation he did make about it, and I told him there had been something filed against it, I don't remember what now.

(Testimony of E. N. Brown.)

Q. Was that a *lis pendens* also?

A. I don't think so; I don't know.

Q. Do you remember what had been filed against it?

A. We had been notified through, that is, from the United States land office, I believe, or somewhere, that these claims had been attacked in some way by the Government, and I don't remember what the details was, but they sent us a list of them; the first list I got out of the newspaper.

Q. Which claims did that refer to,—the claims we have mentioned here this morning?

A. Yes, sir; I think so.

Q. And the first notice you got that there was something wrong with them was some notice from the land office that the Government was attacking them?

A. I believe so; that is, there was something wrong with them,—it was in the newspapers, the claims and the description of them, as belonging to the Clearwater Timber Company; it seems to me there was a [1478—1148] *lis pendens* also filed, and we were notified.

Q. Do you remember in that communication who was the land officer then?

A. I guess Mr. Bartlett.

Q. Mr. Bartlett, the present register of the land office? A. I believe so.

Q. You knew that the deed that had been recorded by error was from Hansen to the Clearwater Timber Company, did you not?

A. Not until after the deed was,—some time after

(Testimony of E. N. Brown.)

the deed was drawn, and I knew it then.

Q. Well, you knew it before the deed had been drawn, before it was recorded? I mean, you had seen the deed before it was recorded, as I understand?

A. No, I never saw the deed, Mr. Gordon. When Mr. Kettenbach asked me to see our attorney relative to taking a deed with a *lis pendens* filed against it, and some other deeds with notices of filing against them, I believe he told me then he got that deed from a man by the name of Hansen, but I never did see the deed.

Q. Did he tell you why he put it on record?

A. No, sir. Well, he has since.

Q. Why, did he tell you?

A. Well, sir, I can't recall just—

Q. See if this doesn't refresh your recollection: Didn't he tell you he sent a deed to Hansen to have him sign it, conveying the property to him, and that Hansen had declined to return the deed, and he put that deed on record to your company for the purpose of protecting himself? A. Not in those words.

Q. Well, wasn't it about that?

A. I couldn't tell you exactly what he said about it, but it was something in connection with Robnett and the deeds, but he told me why in a way, and that is about all I know about it. [1479—1149]

Q. Well, it was to protect himself, to keep the title from getting away; he knew you people would reconvey it when he wanted it?

A. Well, he didn't say much about it.

(Testimony of E. N. Brown.)

Q. Well, wasn't that about what he said?

A. I presume it is, something along the line of what he said, but I don't remember what he said.

Q. And that was just prior to the request being made for this quitclaim deed?

A. No, he didn't talk to me anything about the quitclaim deed at that time at all.

Q. This quitclaim deed was later?

A. Later, yes, sir.

Q. You have no recollection whatever with whom you conducted the negotiations for the Van Artsdalen claim?

A. No, sir, none whatever. I am sure it wasn't Van Artsdalen, but I don't know with whom it was.

Q. Do you know whether it was with Mr. William F. Kettenbach?

A. I don't think it was; I don't remember of any deal of that kind.

Q. Now, is there any way that you know of that the draft given in payment of that could be found?

A. Well, no, I don't know. That draft might have gone in,—that deed could probably have come in with other deeds at the same time, and a draft made for the whole of them, and perhaps it could have been mislaid in some way and wouldn't be recognizable.

Q. With whom did you have negotiations for another purchase of claims in which that would have been included?

A. Well, I don't know. There is a number of people handling claims; there is a great many hand-

(Testimony of E. N. Brown.)

ling them. I don't know who I negotiated with for that claim.

Q. You are sure you didn't pay for the Van Artsdalen claim in cash? [1480—1150]

A. No, never paid for any claims in cash.

Q. At the time that you bought the White claims, you knew at that time of the relation between Mr. William F. Kettenbach and Mrs. White, did you not?

A. Yes, sir.

Q. You knew, and had known for some time, that she was his mother in law, is that correct?

A. Yes, sir, although I had never met Mrs. White at that time.

Q. Did you have any agent authorized to purchase the Van Artsdalen claim for you?

A. No, sir, not unless it was in conversation--

Q. Did you ever put up \$500.00 for an option on that claim, or authorize anybody else to do it?

A. No, sir.

Q. Now, you have referred to the procedure that you had with reference to the purchase of these various claims. As I understand, the custom was that after you had concluded that the land bore sufficient timber, that it would be desirable to own that claim, then you began to look as to the title of it, to inquire as to who you should do business with with reference to the title, is that correct?

A. Not exactly, Mr. Gordon. Usually we never went after a claim to buy it ourselves; it is bad policy.

Q. Somebody came after you?

(Testimony of E. N. Brown.)

A. We let them come to us to sell.

Q. Whoever presented the claim to you, would they furnish you an abstract? A. Yes, sir.

Q. And before you drew the draft there was always an abstract and a deed furnished, is that correct?

A. Well, yes; I would go into a bank with a man—if I was buying a claim from you I would tell you, “Here, which bank do you want to do business with?” Either one you might want to suggest, [1481—1151] “Come in and put your papers and abstracts in here, subject to the examination of our attorney.”

Q. That was always done at the time you put up the draft? A. Yes, sir, usually.

A. Didn't you ever read any of those abstracts yourself, didn't you ever look them over?

A. No, not unless they were returned to us for some reason by the attorney.

Q. But there was an abstract furnished at the time you put the draft up in the bank, wherever you would transact the business? A. Yes.

Q. Now, how far is Moscow from Lewiston?

A. About fifty miles, by railroad.

Q. And it is in the adjoining county to the county Lewiston is in? A. Yes, sir.

Q. Or is it in the same county?

A. In the adjoining county.

Q. How long had you lived at Moscow in 1907, the spring of 1907?

A. Since you recall it, I was living here; I came here to live, I think, in May, 1907.

Q. 1907? A. Yes.

(Testimony of E. N. Brown.)

Q. And for how long prior to that had you lived at Moscow?

A. Why, let's see; well, I came to Moscow in 1894, in June.

Q. Well, that is near enough. And at the trial of any of these persons that we have named here, were you ever present at the courthouse at any of the proceedings?

A. Yes, sir, I was called in there one day to recognize a map.

Q. You were a witness on behalf of the Government at one of those trials? [1482—1152]

A. Yes, sir.

Q. Were you at just one of them, or all three of them? A. Just one.

Q. And that was the trial of the conspiracy case against Kester, Kettenbach and Dwyer?

A. I think that was the second trial.

Q. The last trial they had at Moscow?

A. Yes, sir, I think it was.

Q. And that was what it was called—a fire patrol map, was it? A. Yes, sir.

Q. But you sat around there for a day or two?

A. No; I came up in the morning, got there about ten o'clock, or such a matter, and they used me, and I went back home, back to the woods again.

Q. And that trial was of almost state-wide interest, was it not? A. Yes, people heard generally of it.

Q. You never knew of a trial in the state that was so much talked of as those trials, did you?

A. Well, I didn't hear a great deal of the talk, Mr.

(Testimony of E. N. Brown.)

Gordon; I was in the woods most of the time.

Q. But even people in the woods knew it was going on, didn't they? A. Yes, sir.

Q. Now, wasn't there some objection made by Mr. Davies to the Chapman title, at first?

A. Well, I don't—I couldn't recall that particular title, whether there was or not; there might have been.

Q. See if you can't remember if there wasn't some objection made to it, and you had to take the matter up with Mr. Kettenbach and Mr. Chapman, and then again with Mr. Davies? A. Well, I might have.

Q. Well, don't you remember that that is the fact?

A. I recall something about some part of the deed, but I couldn't [1483—1153] tell you what it was now.

Q. You had an abstract to that too, did you not?

A. The abstract had been sent to Mr. Davies, if there was any trouble about it, and returned to me.

Q. Don't you remember the abstract was returned to you and you had to go to your attorney and discuss the matter with him?

A. Well, I didn't have any attorney here then.

Q. Didn't you have to fix the matter up?

A. No, I don't think I could fix it up. I don't remember much about it. I had no authority to fix up the title. Whoever was selling the claim to us I probably notified of the conditions, and he would be notified himself, because they came back to his bank.

Q. Now, these claims here, these five claims, five or six claims referred to, they are not the only claims that the Kester and Kettenbach people have offered

(Testimony of E. N. Brown.)

to sell you, are they?

A. Well, I couldn't say as to that.

Q. Haven't they put other claims up to you and you declined to buy them? A. They might have.

Q. Don't you remember that they have?

A. They probably have.

Q. And wasn't it for the reason that you were afraid of the titles?

A. Well, I don't know; I don't believe so. We couldn't accept a title, our attorney wouldn't accept it, unless it was good, and usually the case is, when claims are offered for sale, it is because there isn't enough timber on them to afford to pay the price.

Q. Now, you say you knew the Haevernicks?

A. I knew of them.

Q. Did you ever talk with them about the claims that you bought? A. No, sir. [1484—1154]

Q. Do you remember of some suggestion being made that their claims weren't altogether right?

A. No, sir, not until after we were notified—

Q. By the land office?

A. By the land office, I didn't know anything about it.

Q. Now, the tax assessments that they have in this state, will you tell me how they are made up?

A. Whose?

Q. Your assessments here. Don't you make up a list and take it to the tax collector?

A. No; they are made up at St. Paul.

Q. They are made up by the home office?

A. The Assistant Secretary, yes, sir.

(Testimony of E. N. Brown.)

Q. And everything you claim is in that, and that is filed by you here, is that correct?

A. Well, yes; it is sent to us to check over to see if they have left out anything, or put in too much.

Q. And then you file it with the tax collector?

A. Well, I have a lady working for me that tends to that for me; I presume she does.

Q. I mean it is done through your office?

A. Well, I couldn't say whether she files it, or whether Mr. Babb files it.

Q. What I want to get at is the mode; I don't care particularly who files it. But the list is made up at the home office in St. Paul? A. Yes, sir.

Q. And that is sent here to you or to Mr. Davies, which?

A. Well, it is sent to Mr. Babb and to ourselves.

Q. And you all go over it, and if it is correct it is filed by either your attorney or you or somebody in your office? A. I believe it is.

Q. And if it isn't correct, you correct it and file it, is that [1485—1155] correct? A. I believe so.

Q. You say you believe. You know it is so, don't you?

A. Well, I don't know; I haven't had much to do with the taxes the last two or three years, Mr. Gordon. I don't know just exactly. Mr. Babb can enlighten you on that subject.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BABB.)

Q. There is nobody goes over the tax lists now in

(Testimony of E. N. Brown.)

your office except your stenographer, is there?

A. That is all.

Q. I will ask you if you remember, with reference to this Van Artsdalen claim, any connection that Fitzgerald had with it? A. No, I don't recall any.

Q. At this time? A. No, sir.

Q. Was he ever an agent of the Clearwater Timber Company? A. No, sir, not to my knowledge.

Q. If he had anything to do with the purchase of that claim at any time then it was not as agent of the Clearwater Timber Company? A. No, sir.

Q. Do you know whether he had an option on this claim from Van Artsdalen?

A. I couldn't say.

Q. At or near the time the Clearwater Timber company acquired it? A. I couldn't tell you, sir.

Q. It is the case sometimes, is it not, that people do have options other than the persons in whose name the title stands?

A. Very often, I believe. [1486—1156]

Q. You referred in your testimony to receiving a notice at some time from somewhere, you didn't know where, from the land office or from court, somewhere, concerning some defect or alleged defect in these titles? A. Yes, sir.

Q. I will ask you to state whether that was before or after the company had acquired these titles, recorded their deeds, and paid the purchase money.

A. That was after we had acquired the land.

Q. Now, I will ask you if it was not therefore necessarily after the titles to the land had passed

(Testimony of E. N. Brown.)

through the land office and patent had issued, and the Government begun this suit to set aside the patents?

A. Was it what?

Q. If the time you heard of this *lis pendens* was not after the titles had passed through the United States land office, and the patents had issued, and the Government begun this suit to set aside the patents, was it not in fact the notice of this suit to set aside the patents that you saw in this paper?

A. Yes, that is the reason I know it, because the Clearwater Timber Company's name was connected with it.

Q. Made a party defendant? A. Yes, sir.

Q. It was this suit to set aside these patents, was it not? A. I believe it was, yes, sir.

Q. You don't know whether that paper you may have received was issued from the land office and signed by Mr. Bartlett or issued from the United States District Court and signed by the Clerk of the Court, do you? A. No.

Q. At any rate, whether it came from the United States District [1487—1157] Court, or the United States land office, it was after the Clearwater Timber Company had recorded its deeds and paid the purchase price? A. Yes, sir.

Q. Have you made an examination to see whether this Soren Hansen claim is included in the tax lists of the Clearwater Timber Company?

A. No, I have not.

Q. Do you know whether it is or not, actually?

A. I don't know.

(Testimony of E. N. Brown.)

Q. If it should turn out on examination that it is there, would it be right that it should be there, or was it there by mistake?

A. We wouldn't pay the taxes on it.

Q. If you knew it? A. Not if we knew it.

Q. You haven't made any examination of the tax lists or heard of any being made, have you, to find out whether the claim is there or not?

A. No, sir, I haven't the list.

Q. What date was that that you testified in the United States Court at Moscow?

A. Why, I couldn't tell you, Mr. Babb. I think it was in the summertime, or else it was in the fall; I don't know when it was.

Q. All you did was just to produce and identify a file there?

A. That is all. I didn't produce the map; I identified it.

Q. Who had the map there?

A. It might have been me; it was either Fohl or myself that had it there.

Q. That map showed by colorings in a general way the lands held by the different corporations?

A. No, it showed all the land in green that was within the Clearwater Fire Protective Association.
[1488—1158]

Q. It didn't show the individual ownerships?

A. No, sir.

Q. It didn't show what the Clearwater Timber Company had? A. No, sir.

Q. Or Kester and Kettenbach? A. No, sir.

(Testimony of E. N. Brown.)

Q. Or anyone else? A. No, sir.

Q. Is that, in substance, about all you were asked about, just to identify that map?

A. That is all.

Mr. BABB.—I guess that is all.

Redirect Examination.

(By Mr. GORDON.)

Q. I just want to ask one question. Do you remember telling me the other day, in my office, that you or your people never paid any taxes on this Hansen claim? A. I don't believe we ever had.

Q. You stated it more positively than that, didn't you?

A. Well, I don't think we ever paid any taxes on that; I couldn't tell you for certain, but I don't believe we ever paid any taxes on it.

Recross-examination.

(By Mr. BABB.)

Q. It was never your intention to pay any?

A. No, sir.

Mr. BABB.—Of course, since that deed was recorded, it might have by chance been got on. I know about twenty thousand acres that got on up there. That is all.

At this time an adjournment was taken until two o'clock. [1489—1159]

**[Testimony of Mrs. Mabel K. Atkinson, for
Complainant.]**

Mrs. MABEL K. ATKINSON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mabel K. Atkinson?

A. Yes, sir.

Q. Are you a sister of Mr. George K. Kester?

A. Yes, sir.

Q. Mrs. Atkinson, do you remember of taking up a claim under the timber and stone act?

A. Wait until I get my breath.

Q. All right. A. Now, I am ready.

Q. Do you remember of taking up a claim under the timber and stone act? A. Yes, sir.

Q. And do you remember who it was that located you, who was it? A. Mr. Dwyer.

Q. Did you have a relinquishment? Did you purchase a relinquishment?

A. No, not that I know of. I would know it if I did, wouldn't I?

Q. Do you remember whether you went to view this land? A. Yes, sir, I did.

Q. With whom did you go?

A. Why, we all went up in a party.

Q. Who were of the party?

A. I don't remember many; I know my mother and sister and Miss Stevens and Mrs. Sherman,

(Testimony of Mrs. Mabel K. Atkinson.)

and—oh, I don't know; there was others; I don't recall them.

Q. Now, did any one suggest this particular claim to you as being a good claim?

A. No, sir. [1490—1160]

Q. Had you talked with your brother about this?

A. No, sir, I had not. I can tell you just how I came to go if you want me to.

Q. That is what I want to know.

A. I hadn't thought anything about timber claims at all, and one morning I went down to see my mother and sister, and they were preparing to go on claims, and mama wanted me to go along. I hadn't thought anything about it at all, and I got kind of enthused; I thought it would be kind of fun to go on the trip. So I came up town and saw Mr. Dwyer across the street and I hollered over and asked if he had a place for me, and he said, "Get your bonnet," and so I got my bonnet, and that was all there was to it.

Q. Do you remember how much this timber claim cost you? A. How much it cost me? No.

Q. Have you an idea? A. No.

Q. Do you know what the expense was in connection with taking it up? A. No.

Q. Do you remember whether you paid a location fee? A. Yes, sir, I did.

Q. When did you pay that?

A. Oh, I don't know.

Q. When you sold?

A. I don't know, I am sure; I remember of paying it, that is all I know.

(Testimony of Mrs. Mabel K. Atkinson.)

Q. Do you remember how much it was?

A. A hundred dollars, I think, something like that.

Q. Do you remember making your proof in the land office? A. Yes, sir.

Q. Do you remember how much you paid in there?

A. No. [1491—1161]

Q. Do you remember whether you borrowed the money, or used your own money?

A. Oh, I had money of my own.

Q. Where did you get it? Have you an independent income of your own?

A. Why, we are in business.

Q. Were you in business then? A. Yes, sir.

Q. What was the business in 1904?

A. Dentistry.

Q. What was it? A. Dentistry.

Q. You were in business with your husband?

A. Yes, sir.

Q. He is a dentist, is he? A. Yes, sir.

Q. You are not a partner in the business, are you?

A. Well, I guess I can have money once in a while, if there is a little over.

Q. I mean you got it from your husband?

A. Yes, sir. I have my own wages, but if I need more money, why sometimes maybe I can get it.

Q. And you afterwards sold this claim, did you not? A. Yes, sir.

Q. To whom?

A. Why, to Kester and Kettenbach.

Q. With whom did you negotiate the sale, or was that done for you?

(Testimony of Mrs. Mabel K. Atkinson.)

A. No. I did that myself. I just went in and asked to sell it, because I wanted some money.

Q. How much did you get for it? [1492—1162]

A. Twelve hundred; something like that.

Q. Do you remember how long after you made your proof you negotiated the sale?

A. No, sir, I don't.

Q. Have you any idea?

A. No, I haven't any idea.

Q. Do you remember how long before you filed your papers in the land office you had been to view this land? A. No, sir.

Q. Was it the fall before?

A. Was it which?

Q. The fall before the May that you made your entry? A. I couldn't tell you.

Q. Now, when you went from Lewiston to what place did you go, Mrs. Atkinson?

A. To what place did I go?

Q. Yes. When you were going to look at this land, what towns did you go to?

A. Oh, dear me, I don't remember. I went up on the train some place,—Pierce City.

Q. From Pierce where did you go?

A. Out over a trail to Brown's cabin, or something like that.

Q. From Brown's cabin where did you go?

A. We stayed there until we got through. We went out and cruised around and looked over our land and stayed there until we got through, and then came back.

(Testimony of Mrs. Mabel K. Atkinson.)

Q. Did Mr. Dwyer accompany you on this trip?

A. Yes; he went with me a good many times.

Q. You went from here to Pierce City by train, did you? A. Yes, sir.

Mr. GORDON.—That is all. [1493—1163]

Cross-examination.

(By Mr. TANNAHILL.)

Q. You mean you went to Orofino on the train, don't you?

A. I don't know. There wasn't any train to Pierce City at that time. We went on the stage part of the way.

Q. You went on the train to Orofino, did you?

A. Yes, sir. I didn't walk I remember. Yes, I went on the train.

Q. Then, went by conveyance from Orofino to Pierce City? A. I must have.

Q. Then, went out over the trail?

A. Yes, sir.

Q. You stated that you and your husband was in business together. He is a dentist and you are also a dentist, are you not? A. Yes, sir.

Q. And you and he work together?

A. Yes, sir.

Q. Did you have any understanding or agreement with anyone that you would sell your claim to them, before you made your final proof?

A. No, sir, I told you all about that.

Q. And it was some time after you made your final proof before you negotiated a sale of it, was it?

A. Yes, sir. I couldn't just tell; I just needed

(Testimony of Mrs. Mabel K. Atkinson.)

some money and I had that, and I just went after it, that is all.

Q. You are sure that was after you made your final proof? A. Why, yes.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all.

An adjournment was thereupon taken until two o'clock. [1494—1164]

At two o'clock P. M. the hearing was resumed.

**[Testimony of William F. Kettenbach, for
Complainant.]**

WILLIAM F. KETTENBACH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are William F. Kettenbach, one of the defendants in the causes that we are now trying?

A. Yes, sir.

Q. Mr. Kettenbach, are you familiar with the transactions relative to the claim known as the Soren Hansen claim? A. Yes, sir.

Q. I wish you would tell what you know about that claim, and what your connection with it is.

A. Well, it was—I don't just exactly remember the date, but I remember that Robnett (who was then in the bank) spoke to me one day about having a claim for sale.

Q. That is the defendant Robnett?

A. Clarence Robnett; yes. And that he had a deed there in the bank for the claim, all signed up by

(Testimony of William F. Kettenbach.)

this man Hansen, but there was no grantee in it at all. He said that the man was hard up and was owing a mortgage on the claim, and which mortgage they were going to foreclose on him, and he would like to sell it, and he asked me if I couldn't make some disposition of it. And so I told him I would look around and see, and I went to Nat. Brown, of the Clearwater Timber Company, and gave him a description of the claim and asked him if he could make an offer on it, and he said he would look up his estimates and see if he had an estimate on that particular piece of ground, and I think it was a few days after that that he told me what he could pay for it. "Well," [1495—1165] I says, "Brown, it can be had all right, and if you say you will take it why I will get it for you." So he says, "All right," and I had several dealings with Brown along the same lines, and so I went to Robnett and I says, "Well, Nat. Brown will take the claim, and how much does the fellow want for it?" In fact, I think Robnett had told me how much it would take, anyway, before that, to get it. "Well," he says, "Mrs. Thatcher has a mortgage of \$1,000.00 with interest on it, and it will run it up quite a bit, but if they can get the principal they will take the thousand dollars even money." "Well," I says, "all right; I will have Curtis Thatcher come in and pay him the thousand dollars, because I have already an abstract on the claim."

Q. And you paid \$1,000.00 and obtained a relinquishment— A. A release of the mortgage.

Q. A release of the mortgage?

(Testimony of William F. Kettenbach.)

A. And recorded the release of the mortgage.

Q. That was your own money that you paid?

A. That was my own money that I paid, yes, sir. And then I paid over to Robnett, or saw Robnett pay Hansen—I don't know whether I paid any or not to Hansen, but whether I paid Robnett and he paid Hansen I am not sure, but I know Robnett got the money and was to pay Hansen the \$60.00, because I had to pay \$60.00 over and above the mortgage. \$1060.00 was what the claim cost me, plus the abstract.

Q. And you paid the \$60.00; you don't know whether you paid it to Robnett, or whether you paid it to Hansen?

A. Well, I didn't pay it to Hansen; I am pretty sure I paid it to Robnett, and I am under the impression that I saw Robnett pay Hansen at the window.

Q. At the same time? A. At the same time.

Q. Then the deed was made to the Clearwater Timber Company?

A. The Clearwater Timber Company.

Q. And then what happened? [1496—1166]

A. Well, as I was going along with the abstract, I had ordered the abstract made up, and after I had paid the mortgage and paid Robnett to pay Hansen I got the abstract, and then I found that there was a *lis pendens* on the claim, which was a surprise to me. I didn't know anything about that. I figured that the only suits there were were on our own lands, and I ran on to this *lis pendens*. And in the mean-

(Testimony of William F. Kettenbach.)

time Brown had given me a deed, drawn up—they have a separate form of deed, different from anybody else—and he had given me one of their deeds to have him execute, and this deed was executed, and if they was paying all the money and everything the claim was to go to Brown. Of course, I was acting more in the position of a vendor, you might say, but I was paying out my own money and doing all this, and when it was turned over to Brown I was to get my money back. Well, as I say, as soon as I got the abstract I noticed this *lis pendens*, and I went to Brown, and I told him, I says, “Brown, here is a *lis pendens*; I didn’t know it until I got the abstract.” He says, “The claim has never belonged to us, and it must be a mistake that they are suing on that claim,” and I says, “Couldn’t you take it to your attorney and find out?” and he did that; and then, of course, he couldn’t take it.

Q. Then you asked for a deed to yourself?

A. Then I asked for a deed to myself.

Q. And you prepared the deed?

A. I prepared the deed, and gave it to Mr. Robnett.

Q. And that is the deed that was offered here in evidence, wasn’t it?

A. Well, I didn’t know it had been offered in evidence. But the condition was this: It was just about that time, Mr. Gordon, where things got to that stage where this bank trouble came up, the first exposure of the thing, and I had my money tied up in it, and I felt that Robnett was naturally not interested in me any more, or in us, and it seemed apparently he

(Testimony of William F. Kettenbach.)

had not been for quite a while, and I was there with my money out, and nothing to show for it. There was no reason [1497—1167] why Robnett could not have gone to Hansen and got a deed to myself, so I took the matter in my own hands, and on my own volition I took the deed I had used, conveying the land to the Clearwater Timber Company, and put that on record, feeling that I could go to them and that they would quitclaim back to me, and in that way I could protect myself, and that is the reason I did that.

Q. And you understood that they had no interest in the claim at all, and you just put it on record to protect yourself? A. To protect myself.

Q. And in reality—

A. Well, Brown had called the deal off, you see.

Q. In reality the claim was yours?

A. The claim was mine, yes.

Q. You had bought it and paid for it?

A. I had bought it and paid for it, but expected the Clearwater Timber Company to take it, and I thought this thing might drag on indefinitely, I didn't know, and this other proposition came up where I might have got out of it, and I thought I had better protect myself the best I could, and I put it on record.

Q. And so you have paid the taxes on it ever since?

A. Yes, sir.

Q. About this deed which was introduced in evidence here that Mr. Babb brought here, did you ever have that deed?

A. No, sir. I have a copy of the letter which Mr.

(Testimony of William F. Kettenbach.)

Brown wrote to Mr. Babb, saying that from all the knowledge he had of the thing I was entitled to a quitclaim deed, and he had put the matter up to his people and I expected from that letter that I would naturally receive a deed in the course of a short while.

Q. Have you got that letter?

A. No, sir, but it is about like I said, that knowing the conditions as he did, that they should quitclaim the land back to me; that they hadn't bought it, and that I had paid out the money for it.
[1498—1168]

Q. In reality the property is yours?

A. Yes, sir; but I have never seen that deed that Mr. Babb had this morning, and I didn't know how far the matter had progressed in conveying the title to me.

Cross-examination.

(By Mr. TANNAHILL.)

Q. That was your own money that you paid for this claim, was it, Mr. Kettenbach?

A. Yes, sir, that was my own \$1,060.00.

Q. And Hansen got just what he asked for the claim?

A. I presume he did. Robnett was dealing for Hansen. In fact, I took it from Hansen that he would be satisfied if he got clear of any deficiency that there might be on the mortgage. But I paid him \$60.00 over and above the mortgage.

Q. Were you in court when Mr. Hansen testified that he had received the \$60.00?

A. No; I wasn't here when Hansen testified.

(Testimony of William F. Kettenbach.)

Q. But your recollection is that you saw Robnett pay Hansen the money at the time?

A. It is my recollection that I saw Robnett pay Hansen the money right out of the window. But at any rate I will swear that Robnett told me that he was paid.

Q. Did you have any agreement with Mr. Hansen to purchase this claim, before he made final proof on it?

A. No, sir. I didn't know that Hansen owned the claim until Robnett spoke about his having the claim, and that there was a deed in the bank with a place left blank for the grantee, so that Robnett could sell it to anybody, I presume.

Q. Did you have an agreement with Robnett to purchase this land from Mr. Hansen?

A. No, sir.

Q. And you had no agreement or understanding with Mr. [1499—1169] Robnett that he should purchase this land for you, before final proof was made on it? A. No, sir.

Mr. GORDON.—We object to these questions, on the ground that they are not proper cross-examination; that the matter with reference to which he is interrogating the witness was not gone into on examination in chief.

Mr. TANNAHILL.—Q. And the first you knew of it was about the time the land was purchased?

A. Just at that time when Robnett put it up to me that this claim was for sale, and wanted to know if I knew where it could be sold, and I simply interested myself to the extent that I have stated.

(Testimony of William F. Kettenbach.)

Q. Did you have any understanding of any agreement between Robnett and Hansen?

A. Not at all.

Mr. GORDON.—The same objection.

Mr. TANNAHILL.—Did you have any understanding of any agreement existing, before final proof was made, that Robnett should sell the claim for him?

A. I didn't know anything about any agreement between Robnett and Hansen at all.

Mr. GORDON.—It may be understood that the same objection will run to all this?

The SPECIAL EXAMINER.—Yes; the same objection will be noted.

Mr. TANNAHILL.—That's all. [1500—1170]

Mr. GORDON.—I will state that I understood that the deed that was presented and identified by Mr. Babb this morning was offered and read in evidence by him, but in the event that there should be any question about it, I wish to offer the same deed in evidence.

[Stipulation that Certain Instruments were Filed for Record.]

It is stipulated by and between the parties hereto, in open court, that the following instruments were filed for record in the office of the county recorder of Nez Perce County, State of Idaho, and were duly recorded in said office, as follows:

BENJAMIN F. BASHOR, T. & S. No. 4390.

Description: Lot 4, SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. $\frac{1}{2}$, SW. $\frac{1}{4}$,
Sec. 24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

BENJAMIN F. BASHOR.

Receiver's Receipt.

Dated June 17, 1903.

Recorded June 20, 1903, Book D-2, p. 161, at request
of W. F. Kettenbach.

BENJAMIN F. BASHOR, and EMMA C.
BASHOR, Wife,

to

CLARENCE W. ROBNETT.

Mortgage: \$500.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before Jno. E. Nickerson,
N. P., Nez Perce County, Idaho.

Recorded June 20, 1903, Book 76, p. 448, at request
of W. F. Kettenbach.

Released April 23, 1906, Book 58, p. 294.

[1501—1171]

UNITED STATES

to

BENJAMIN F. BASHOR.

Patent.

Dated August 3, 1904.

Recorded April 13, 1906, Book 38, p. 75, at request
of Lewiston Abstract Company.

Delivered to Lewiston Abstract Company.

1698 *The United States of America*

BENJAMIN F. BASHOR, and EMMA C.
BASHOR, Wife,
to
W. F. KETTENBACH.

Deed.

Consideration, \$900.00.

Dated April —, 1906.

Acknowledged April 17, 1906, before Jesse Peterson,
N. P., Nez Perce County, Idaho.

Recorded April 21, 1906, Book 85, p. 543, at request
of Lewiston National Bank.

Delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.
[1502—1172]

JOSEPH B. CLUTE, T. & S. No. 4393.

Description: SE. $\frac{1}{2}$, NE. $\frac{1}{4}$, E. $\frac{1}{2}$, SE. $\frac{1}{4}$, Sec. 26,
T. 39 N., R. 3 E., B. M

UNITED STATES

to

JOSEPH B. CLUTE.

Receiver's Receipt

Dated June 17, 1903.

Recorded August 10, 1903, Book D-2, p. 185, at re-
quest George H. Kester.

JOSEPH B. CLUTE, Single,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 269, at re-
quest of George H. Kester.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KES-
TER and EDNA P. KESTER, Wife,
to

THE IDAHO TRUST CO.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907.

Recorded July 10, 1907, at request of C. W. Robnett,
in Book 87, p. 537. [1503—1173]

EDGAR H. DAMMARELL, T. & S. No. 4799.

Description: NE. ¼ of Sec. 19, T. 38 N., R. 6 E., B. M.

1700 *The United States of America*

EDGAR H. DAMMARELL and NELLIE M. DAM-
MARELL,
to
J. O'KEEFE.

Warranty Deed.

Consideration, \$1.00.

Dated July 26, 1905.

Acknowledged July 26, 1904, before Geo. W. Bailey,
N. P., Asotin, Washington.

Recorded January 18, 1906, Book 84, p. 314, at re-
quest Lewiston National Bank, and delivered to
Lewiston National Bank.

J. O'KEEFE and MARY E. O'KEEFE, Wife,
to

W. F. KETTENBACH and GEORGE H. KESTER.

Quitclaim Deed.

Consideration, \$1.00.

Dated July 30, 1904.

Acknowledged July 30, 1904, before Geo. W. Bailey,
N. P., Asotin, Washington.

Recorded Jan. 31, 1906, Book 84, p. 361, at request
Lewiston National Bank, and delivered to Lew-
iston National Bank.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$2.00.

Dated December 31, 1909.

Recorded Jan. 27, 1910, at 11:10 A. M., at request
Nez Perce County Abstract Co., Book 10 of
Deeds, p. 488, No. 50,677.

Above-described land and other land. [1504—1174]

BERTSEL H. FERRIS, T. & S. No. 4414.

Description: Lot 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

BERTSEL H. FERRIS.

Receiver's Receipt.

Dated June 26, 1903.

Recorded July 1, 1903, Book D-2, p. 172, at request
W. F. Kettenbach.

BERTSEL H. FERRIS, Single,

to

CLARENCE W. ROBNETT.

Mortgage: \$728.75.

Dated June 26, 1903.

Acknowledged June 26, 1903, before Jno. E. Nick-
erson, N. P., Nez Perce County, Idaho.

Recorded July 1, 1903, in Book 76, p. 456, at request
W. F. Kettenbach.

1702 *The United States of America*

BERTSEL H. FERRIS and MABEL E. FERRIS,
Wife,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1,165.00.

Dated January 16, 1907.

Acknowledged January 16, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded January 18, 1907, Book 86, p. 236, at request Lewiston National Bank, and delivered to Lewiston National Bank. [1505—1175]

UNITED STATES

to

BERTSEL H. FERRIS.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, Book 38, p. 271, at request of C. W. Robnett, and delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1506—1176]

ELLSWORTH M. HARRINGTON, T. & S. No. 4384.

Description: Lot 1, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

ELLSWORTH M. HARRINGTON.

Receiver's Receipt.

Dated June 15, 1903.

Recorded June 20, 1903, Book D-2, p. 160, at request

W. F. Kettenbach.

ELLSWORTH M. HARRINGTON and ANNA E.

HARRINGTON, Wife,

to

CLARENCE W. ROBNETT.

Mortgage, \$729.75.

Dated June 16, 1903.

Acknowledged June 16, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded June 20, 1903, Book 76, p. 446, at request

W. F. Kettenbach.

Released May 16, 1907, Book 58, p. 344.

ELLSWORTH M. HARRINGTON and ANNE E.

HARRINGTON, Wife,

to

W. F. KETTENBACH.

Warranty Deed.

Consideration, \$1,000.00.

Dated May 8, 1906.

Acknowledged May 9, 1906, before C. H. Lingenfelter, N. P., Nez Perce County, Idaho.

Recorded May 12, 1906, Book 81, p. 621, at request

Lewiston National Bank, and delivered to Lewiston National Bank. [1507—1177]

1704 *The United States of America*

UNITED STATES

to

ELLSWORTH M. HARRINGTON.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, Book 38, p. 268, at request C. W. Robnett, and delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1508—
1178]

FRED. E. JUSTICE, T. & S. No. 4772.

Description: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20, T. 38 N., R. 6 E., B. M.

FRED. E. JUSTICE, Single,

to

W. F. KETTENBACH and GEORGE H. KESTER.

Deed.

Consideration, \$1.00.

Dated July 13, 1904.

Acknowledged July 13, 1904, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded June 26, 1906, Book 89, p. 194, at request Lewiston National Bank, and delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, His Wife, GEORGE H.
KESTER and EDNA P. KESTER, His Wife,
to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$2.00.

Dated December 31, 1909.

Recorded Jan. 27, 1910, at 11:10 A. M., in Book 100
of Deeds, p. 488, at request of Nez Perce County
Abstract Company. [1509—1179]

JOHN H. LITTLE, T. & S. No. 4383.

Description: Lot 1, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec.
25, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

JOHN H. LITTLE.

Receiver's Receipt.

Dated June 15, 1903.

Recorded June 20, 1903, Book D-2, p. 160, Nez Perce
County, at request W. F. Kettenbach.

JOHN H. LITTLE and EDNA FIFE LITTLE,
Wife,

to

CLARENCE W. ROBNETT.

1706

The United States of America

Mortgage: \$760.00.

Dated June 15, 1903.

Acknowledged June 15, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded June 20, 1903, Book 76, p. 447, at request W. F. Kettenbach.

Released Oct. 25, 1904, Book 76, p. 587.

UNITED STATES

to

JOHN H. LITTLE.

Patent.

Dated August 3, 1904.

Recorded Jan. 26, 1907, Book 38, p. 273, at request C. W. Robnett, and delivered to Lewiston National Bank. [1510—1180]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

JOHN H. LITTLE and EDNA FIFE LITTLE,
Wife,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated October 24, 1904.

Acknowledged October 24, 1904, before H. K. Barnett, N. P., Nez Perce County, Idaho.

Recorded October 27, 1904, Book 91, p. 56, at request of W. F. Kettenbach. [1511—1181]

BENJAMIN F. LONG, T. & S. No. 4397.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 13, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

BENJAMIN F. LONG.

Receiver's Receipt.

Dated January 18, 1903.

Recorded June 22, 1903, in Book D-2, p. 163, at request of W. F. Kettenbach.

BENJAMIN F. LONG, Single,

to

CLARENCE W. ROBNETT.

Mortgage, to Secure Note of \$728.75.

Dated June 18, 1903.

Acknowledged June 18, 1903, before John E. Nickerson, Notary Public for Nez Perce County.

Recorded June 22, 1903, in Book 76, p. 454, at request of W. F. Kettenbach.

Said mortgage is released July 25, 1904, in Book 76, page 564.

BENJAMIN F. LONG, Single,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated July 25, 1904.

Acknowledged July 25, 1904, before D. Needham, a

1708 *The United States of America*

Notary Public of Nez Perce County, Idaho.

Recorded July 27, 1904, in Book 831½, page 588, at
request of W. F. Kettenbach. [1512—1182]

UNITED STATES

to

BENJAMIN F. LONG.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, in Book 38, p. 274, at re-
quest of C. W. Robnett.

Said patent returned to the Lewiston National Bank.
[1513—1183]

FRANCIS M. LONG, T. & S. No. 4395.

Description: N. ½ SW. ¼, N. ½ SE. ¼, Sec. 13, T.
39 N., R. 3 E., B. M.

UNITED STATES

to

FRANCIS M. LONG.

Receiver's Receipt.

Dated June 18, 1903.

Recorded June 22, 1903, in Book D-2, p. 162, at re-
quest of W. F. Kettenbach.

FRANCIS M. LONG and Wife ANNA E.,
to

CLARENCE W. ROBNETT.

Mortgage, to Secure Note for \$728.75.

Dated June 18, 1903.

Acknowledged June 18, 1903, before John E. Nick-
erson, a Notary Public for Nez Perce County,
Idaho.

Recorded June 22, 1903, in Book 76, p. 452, at request of W. F. Kettenbach.

Released August 9, 1904, in Book 76, p. 565.

FRANCIS M. LONG and Wife ANNIE E.,
to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated August 9, 1904.

Acknowledged August 9, 1904, before D. Needham, a
Notary Public for Nez Perce County, Idaho.

Recorded August 12, 1904, in Book 83½, page 604,
at request of W. F. Kettenbach. [1514—1184]

UNITED STATES

to

FRANCIS M. LONG.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, in Book 38, page 270, at
request of C. W. Robnett.

Patent returned to the Lewiston National Bank.
[1515—1185]

JOHN H. LONG, T. & S. No. 4396.

Description: Lot 2, SW. ¼ NE. ¼, S. ½ NW. ¼, Sec.
24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

JOHN H. LONG.

1710

The United States of America

Receiver's Receipt.

Dated June 18, 1903.

Recorded June 22, 1903, in Book D-2, page 162, at
request of W. F. Kettenbach.

JOHN H. LONG, Single,

to

CLARENCE W. ROBNETT.

Mortgage, to Secure Promissory Note of \$710.00.

Dated June 18, 1903.

Acknowledged June 18, 1903, before John E. Nick-
erson, a Notary Public of Nez Perce County,
Idaho.

Recorded June 22, 1903, in Book 76, page 453, at re-
quest of W. F. Kettenbach.

Released July 21, 1904, in Book 76, page 559. [1516
—1186]

JOHN H. LONG, Single,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated July 21, 1904.

Acknowledged July 21, 1904, before D. Needham, a
Notary Public for Nez Perce County, Idaho.

Recorded July 23, 1904, in Book 83½, page 587, at
request of W. F. Kettenbach.

UNITED STATES

to

JOHN H. LONG.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, in Book 38, page 269,
at request of C. W. Robnett. [1517—1187]

CARRIE D. MARIS, T. & S. No. 4049.

Description: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,
NE. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 13, T. 36 N., R. 5 E., B. M.

UNITED STATES

to

CARRIE D. MARIS.

Receiver's Receipt.

Dated November 21, 1902.

Recorded at request of Shoshone Abstract Company
June 27, 1903, in Book D-2, p. 164.

CARRIE D. MARIS, Single,

to

CLARENCE W. ROBNETT.

Deed.

Consideration, \$1500.00.

Dated June 2, 1903.

Acknowledged June 2, 1903, before John E. Nick-
erson, a Notary Public for Nez Perce County,
Idaho.

Recorded at request of Shoshone Abstract Company
June 27, 1903, in Book 83 $\frac{1}{2}$, page 225. [1518
—1188]

UNITED STATES

to

CARRIE D. MARIS.

Patent.

Dated February 25, 1904.

Recorded at request of Shoshone Abstract Company

May 9, 1906, in Book 38, page 115.

Returned to Lewiston National Bank.

CLARENCE W. ROBNETT and Wife, JENNIE
E.,

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Consideration, \$1,000.00.

Dated July 12, 1906.

Acknowledged July 12, 1906, before John D. Mc-
Conkey, a Notary Public for Nez Perce County,
Idaho.

Recorded at request of Lewiston National Bank,
June 27, 1906, in Book 88, page 100.

Returned to Lewiston National Bank. [1519—
1189]

JACKSON O'KEEFE, T. & S. No. 4764.

Description. W. $\frac{1}{2}$ SE. $\frac{1}{4}$ and E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
23, T. 38 N., R. 5 E., B. M.

UNITED STATES

to

JACKSON O'KEEFE.

Receiver's Receipt.

Dated July 11, 1904.

Recorded at request of George H. Kester September
2, 1904, in Book D-2, page 278.

JACKSON O'KEEFE, and ETTA, His Wife,
to

LEWISTON NATIONAL BANK, a Corporation.

Mortgage to Secure \$2180.00.

Dated August 27, 1904.

Acknowledged August 29, 1904, before George W.
Bailey, a Notary Public, of Asotin, Washing-
ton.

Recorded at request of George H. Kester September
2, 1904, in Book 76, page 570.

Released July 2, 1907, in Book 59, page 385. [1520
—1190]

JACKSON O'KEEFE

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Consideration, \$1500.00.

Dated June 16, 1906.

Acknowledged June 16, 1906, before John E. Nick-
erson, a Notary Public for Nez Perce County,
Idaho.

Recorded at request of George H. Kester June 19,
1906, in Book 88, page 55.

Returned to Lewiston National Bank.

Patent recorded June 2, 1910. [1521—1191]

WREN PIERCE, T. & S. No. 4389.

Description: SE. $\frac{1}{4}$, Sec. 22, T. 39 N., R. #3 E.,
B. M.

1714 *The United States of America*

UNITED STATES

to

WREN PIERCE.

Receiver's Receipt.

Dated June 17, 1903.

Recorded at request of W. F. Kettenbach, June 20,
1903, in Book D-2, p. 161.

WREN PIERCE and MAY PIERCE, Wife,
to

CLARENCE W. ROBNETT.

Mortgage, to Secure Note of \$728.75.

Dated June 17, 1903.

Acknowledged June 17, 1903, before John E. Nick-
erson, N. P., Nez Perce County, Idaho.

Recorded at request of W. F. Kettenbach, June 20,
1903, in Book 76, p. 449.

Released June 1, 1904, in Book 76, p. 546. [1522—
1192]

WREN PIERCE and MAY PIERCE, His Wife,
to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated May 31, 1904.

Acknowledged May 31, 1904, before John H. Shildts,
a Notary Public for Nez Perce County, Idaho.

Recorded at request of W. F. Kettenbach June 3,
1904, in Book 83½, p. 546.

UNITED STATES

to

WREN PIERCE.

Patent.

Dated August 3, 1904.

Recorded at request of C. W. Robnett, January 26, 1907, in Book 38, p. 275.

Returned to Lewiston National Bank. [1523—1193]

JOSEPH H. PRENTICE, T. & S. No. 4766.

Description: Lots 1, 2, and E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 18, T. 38 N., R. 6 E., B. M.

JOSEPH H. PRENTICE, and EMMA A. PRENTICE, Wife,

to

J. O'KEEFE.

Warranty Deed.

Consideration, \$1.00.

Dated July 25, 1904.

Acknowledged July 26, 1904, before George W.

Bailey, a Notary Public of Asotin, Washington.

Recorded at request of Lewiston National Bank, January 18, 1906, in Book 84, p. 313.

J. O'KEEFE and Wife, MARY E.,

to

W. F. KETTENBACH and GEORGE H. KESTER.

Quitclaim Deed.

Consideration, \$1.00.

Dated July 30, 1904.

Acknowledged July 30, 1904, before George W.

Bailey, a Notary Public, of Asotin, Washington.

1716 *The United States of America*

Recorded at request of Lewiston National Bank

January

July 31, 1906, in Book 84, p. 361.

Returned to Lewiston National Bank.

Patent dated July 31, 1904, and recorded June 2,
1910. [1524—1194]

GEORGE RAY ROBINSON, T. & S. No. 4415.

Description: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 26,

T. 39 N., R. 3 E., B. M.

UNITED STATES

to

GEORGE RAY ROBINSON.

Receiver's Receipt.

Dated June 26, 1903.

Recorded at request of William F. Kettenbach, July
1, 1903, in Book 82, p. 172.

GEORGE RAY ROBINSON, Single,

to

CLARENCE W. ROBNETT.

Mortgage to Secure Note for \$728.75.

Dated June 26, 1903.

Acknowledged June 27, 1903, before John B. An-
derson, a Notary Public for Nez Perce County,
Idaho.

Recorded at the request of W. F. Kettenbach July
1, 1903, in Book 76, p. 457.

GEORGE RAY ROBINSON, Single,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated Oct. 16, 1905.

Acknowledged Oct. 16, 1905, before Thomas Mullen,
a Notary Public for Nez Perce County, Idaho.

Recorded at the request of the Lewiston National
Bank, January 6, 1906, in Book 85, p. 201.

Returned to Lewiston National Bank. [1525—
1195]

UNITED STATES

to

GEORGE RAY ROBINSON.

Patent.

Dated August 3, 1904.

Recorded at request of C. W. Robnett, January 26,
1907, in Book 38, p. 272.

Returned to Lewiston National Bank. [1526—
1196]

CHARLES W. TAYLOR, T. & S. No. 4762.

Description: Lots 1, 2, and E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 30,
T. 38 N., R. 6 E., B. M.

CHARLES W. TAYLOR, Single,

to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Warranty Deed.

Consideration, \$1.00.

Dated July 12, 1904.

Acknowledged July 12, 1904, before George W.
Bailey, a Notary Public, of Asotin County,
Washington.

Recorded at the request of the Lewiston National Bank, January 20, 1906, in Book 84, p. 327.
[1527—1197]

EDGAR J. TAYLOR, T. & S. No. 4765.

Description: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 18, T. 38 N., R. 6 E., B. M.

EDGAR J. TAYLOR, Single,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Warranty Deed.

Consideration, \$1.00.

Dated July 12, 1904.

Acknowledged July 12, 1904, before George W. Bailey, a Notary Public of Asotin, Washington.
Recorded at the request of Lewiston National Bank,
January 20, 1906, in Book 84, p. 326.

Returned to Lewiston National Bank.

Patent dated December 31, 1904, and recorded June 2, 1910. [1528—1198]

[Offer of Deeds from Wm. F. Kettenbach and Wife,
and George H. Kester and Wife, to Idaho Trust
Company.]

Mr. GORDON.—We offer in evidence a deed made by William F. Kettenbach and wife, and George H. Kester and wife to The Idaho Trust Company, dated July 6, 1907, and recorded at the request of C. W. Robnett, in the office of the recorder of Nez Perce County, Idaho, in Book 87, page 537, and read the same into the record as follows:

“ #33881 WARRANT DEED.

THIS INDENTURE, Made this 6th day of July, in the year of our Lord One Thousand Nine Hundred and Seven, between William F. Kettenbach and Mary Jane Kettenbach, his wife, and George H. Kester and Edna P. Kester, his wife, of Lewiston, County of Nez Perce, State of Idaho, parties of the first part, and The Idaho Trust Company, a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Lewiston, Nez Perce County therein, the party of the second part.

WITNESSETH, That the said parties of the first part for and in consideration of the sum of One Dollar of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell and confirm unto the said party of the second part, and its successors and assigns forever, all the following described real estate, situated in Nez Perce County, State of Idaho, to wit:

North half of North half of Section fourteen (14) Northwest quarter of Southwest quarter of Section fourteen (14) North half of Southeast and Southeast quarter of Northeast quarter of Section fifteen (15); North half of Section twenty-two (22) South half of Southwest quarter, Southeast quarter and South half of Northeast quarter of Section twenty-three (23); South of Northeast quarter and east half of Southeast quarter of Section twenty-six (26) South half of Northwest quarter and West half of

Southwest quarter of Section twenty-five (25) all in Township thirty-nine (39) North Range three (3), East Boise Meridian, [1529—1199] containing 1280 acres, more or less.

Southwest quarter of Northwest quarter, South half of Northeast quarter and Southwest quarter of Southeast quarter of Section nine (9), East half of Northwest quarter, Southwest quarter of Northwest quarter and South half of Southwest quarter of Section twenty-one (21) North half of North half, South half of Northeast quarter, East half of Southeast quarter Southwest quarter of Southeast quarter, and Southwest quarter of Section twenty (20); Northeast quarter, East half of Southeast quarter, Southwest quarter of Southeast quarter, and South half of Southwest quarter of Section twenty-nine (29); North half of North half, Southeast quarter of Northeast quarter of Section thirty-two (32); Northeast quarter of Southeast quarter and Lot numbered Eleven (11) of Section thirty (30); Lot numbered one (1) of Section thirty-one (31) all in Township thirty-nine (39), North Range four (4), East Boise Meridian, Containing 1520 acres, more or less. North half of Southwest quarter, Southwest quarter of Southwest quarter of Section five (5); Northwest quarter of Northwest quarter of Section eight (8); South half of Section seventeen (17); South half of Section nineteen (19); North half of Northeast quarter of Section thirty (30); Northeast quarter and Northeast quarter of Southeast quarter of Section twenty-nine (29); North half of Southwest quarter and Northeast quarter of Section twenty-eight (28);

West half of Northwest quarter of Section twenty-seven (27); all in township thirty-nine (39), North Range five (5) East Boise Meridian, containing 1400 acres, more or less.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion or reversions, remainder or remainders, rents, issues and profits thereof, and all the estate, right, title and interest in and to the said property, as well as in law as in equity, of the said parties of the first part. [1530—1200]

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises together with the appurtenances unto the party of the second part and to its successors and assigns forever. And the said parties of the first part, for their heirs, executors, administrators and assigns do covenant and agree to and with the second party that at the time of the ensealing and delivery of this instrument the first parties are lawfully seized of said premises in fee simple absolute. And the said parties of the first part, and their heirs the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said parties of the first part and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals

the day and year above written.

WILLIAM F. KETTENBACH. [Seal]

MARY JANE KETTENBACH. [Seal]

GEORGE H. KESTER. [Seal]

EDNA P. KESTER. [Seal]

Signed, sealed and delivered in the presence of:

STATE OF IDAHO,

County of Nez Perce,—ss.

On this 6 day of July in the year 1907, before me, Chas. L. McDonald, a Notary Public in and for said County, personally appeared William F. Kettenbach and George H. Kester, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same, and on this 6th day of July, in the year 1907, before me the officer above described, personally appeared Mary Jane Kettenbach and Edna P. Kester, known to me to be the persons whose names are subscribed to the within instrument, described as married women, and upon an examination without [1531—1201] the hearing of their husbands I made them acquainted with the contents of the instrument, and thereupon they acknowledged to me that they executed the same and that they do not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] CHAS. L. McDONALD,
Notary Public in and for Nez Perce County, Idaho.

Filed for record July 10th A. D. 1907 at 12:15
o'clock P. M. Request of C. W. Robnett.

W. L. GIFFORD,
Recorder.

By C. L. Swormstedt,
Deputy.

Fees \$2.75."

Mr. TANNAHILL.—The defendants severally
waive any further identification of the deed offered.

Mr. GORDON.—We offer in evidence a deed
made by William F. Kettenbach and Mary Jane
Kettenbach, his wife, and George H. Kester and
Edna P. Kester, his wife, to the Idaho Trust Com-
pany, a corporation, dated December 31, 1909, and
recorded at the request of the Nez Perce County
Abstract Company, in the office of the recorder of
Nez Perce County, Idaho, in Book 100, page 488,
and read the same into the record, as follows:

"#50677 WARRANT DEED.

THIS INDENTURE, Made this 31st day of
December in the year of our Lord One Thousand
Nine Hundred Nine, Between William F. Ketten-
bach and Mary Jane Kettenbach, his wife, of the
City of Lewiston, Nez Perce County, State of
Idaho; and George H. Kester and Edna P. Kes-
ter, his wife, of Spirit Lake, Kootenai County,
Idaho, the parties of the first part, to The Idaho
Trust Company, a corporation under the [1532—
1202] laws of Idaho, doing business in the City
of Lewiston, County of Nez Perce, State of Idaho,
the party of the second part.

WITNESSETH, That the said parties of the

first part, for and in consideration of the sum of Two (\$2.00) Dollars, Gold Coin of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to their successors and assigns forever, all the following described real estate, situated in Nez Perce County, State of Idaho, to-wit:

The Northeast quarter of the Northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section eight (Sec. 8) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Northwest quarter of the Northeast quarter (NW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section nine (Sec. 9) of Township forty (40) North of Range five (5) E., B. M., containing one hundred and sixty (160) acres, and the Northeast quarter (NE. $\frac{1}{4}$) of Section twenty-four (24) of Township thirty-eight (38) North of Range Two (2) E., B. M., containing one hundred and sixty acres, and the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the West half of the Southeast quarter (W. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section two (Sec. 2) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) of Section eleven (Sec. 11) and the East half of the Northeast quarter (E. $\frac{1}{2}$ NE. $\frac{1}{4}$) of Section ten (Sec. 10) and the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the North half of the Southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) and the Northeast quarter of the Southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section thirty-three (Sec. 33), and the

East half of the Southwest quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the Southwest quarter of the Southwest quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section thirty-five (Sec. 35) and the Southeast quarter of the Southeast quarter (SE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section thirty-four (Sec. 34) all in Township thirty-eight (38) North of Range four (4) E., B. M., containing Six hundred (600) acres, and the West half of the Southeast quarter (W. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section six (Sec. 6) and the Southeast quarter of the [1533—1203] Southwest quarter (SE. $\frac{1}{4}$ SW. $\frac{1}{4}$) and the North half of the Southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section five (Sec. 5) and the Northwest quarter (NW. $\frac{1}{4}$) of Section four (Sec. 4) and the West half of the Northwest quarter (W. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Northeast quarter of the Southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section eight (Sec. 8) and the Northeast quarter of the Southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section nine (Sec. 9) and the South half of the Southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section seven (Sec. 7) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) of Section eighteen (Sec. 18) and the South half of the Southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section fifteen (Sec. 15) and the Northwest quarter (NW. $\frac{1}{4}$) of Section twenty (Sec. 20) and the Northeast quarter of Section twenty-four (Sec. 24), and the East half of the Southwest quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$), and the Northwest quarter of the Southwest quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$), and the Southeast quarter (SE. $\frac{1}{4}$) of Section twenty-three (Sec. 23) and the North half of the Northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$)

and the Southeast quarter of the Northeast quarter (SE. $\frac{1}{4}$ N.E. $\frac{1}{4}$) of Section twenty-six (Sec. 26) and the Northeast quarter (NE. $\frac{1}{4}$) and the Southeast quarter (SE. $\frac{1}{4}$) and West half of the Southwest quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section twenty-five (Sec. 25) all in township thirty-eight (38) North of range five E., B. M., containing Eighteen Hundred and Eighty (1880) acres, and the North half of the Southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section eight (Sec. 8) and the North half of the Southwest quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section nine (Sec. 9), and the Northwest quarter (NW. $\frac{1}{4}$) and the Southwest quarter (SW. $\frac{1}{4}$) of Section eighteen (Sec. 18) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) of Section seventeen (Sec. 17) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the North half of the Northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the South half of the Southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the South half of the Southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section fifteen (Sec. 15) and the Southeast quarter of the Southwest quarter (SE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section thirteen (Sec. 13) [1534—1204] and the Southeast quarter (SE. $\frac{1}{4}$) and the Northeast quarter (NE. $\frac{1}{4}$) of Section nineteen (Sec. 19) and the East half of the Northeast quarter (E. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the East half of the Southeast quarter (E. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section twenty (Sec. 20) and the Northeast quarter (NE. $\frac{1}{4}$) and the Northwest quarter (NW. $\frac{1}{4}$) of Section thirty (Sec. 30) and the Northeast quarter (NE. $\frac{1}{4}$) and the Northwest quarter (NW. $\frac{1}{4}$) of Section twenty-nine (Sec. 29) and the Northeast

quarter (NE. $\frac{1}{4}$) and the East half of the Northwest quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Southwest quarter of the Northwest quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section twenty-four (Sec. 24) all in township thirty-eight (38) North of Range six (6) E., B. M., containing twenty-three hundred and twenty (2320) acres.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title and interest in and to the said property, as well in law as in equity of the said parties of the first part.

TO HAVE AND TO HOLD, all and singular the above-mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever, and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said parties of the first part, and their heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals,

the day and year first above written. [1535—1205]

WILLIAM F. KETTENBACH. [Seal]

MARY JANE KETTENBACH. [Seal]

GEORGE H. KESTER. [Seal]

EDNA P. KESTER. [Seal]

Witness:

E. V. KLEIN.

J. W. PANTELL.

STATE OF IDAHO,

County of Nez Perce,—ss.

On this 14th day of January in the year 1910 before me May C. Hyke a Notary Public in and for said County, personally appeared William F. Kettenbach and Mary Jane Kettenbach, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and they acknowledged severally to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

RAY C. HYKE,

Notary Public in and for said Nez Perce County,
State of Idaho.

[Ray C. Hyke, Notary Public, Nez Perce County,
Idaho.]

STATE OF WASHINGTON,

County of Spokane,—ss.

On this 13 day of January in the year 1910 before me E. V. Klein a Notary Public in and for said state of Washington, residing at Spokane in Spokane County, State of Washington, personally appeared George H. Kester and Edna P. Kester, his wife

known to me to be the persons whose names are subscribed to the foregoing instrument and they acknowledged severally to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal]

E. V. KLEIN,

Notary Public in and for the State of Washington,
Residing at Spokane, [1536—1206] in Spokane County therein.

Filed for record Jan. 27th, A. D. 1910, at 11:10 o'clock A. M. Request of Nez Perce Co. Abst. Co.
Fees \$2.80.

W. L. GIFFORD,

Recorder.

By R. L. Thompson,

Deputy."

Mr. TANNAHILL.—The defendants severally waive any further identification of the deed offered.
[Offer of Deed from Lewiston National Bank to Idaho Trust Company.]

Mr. GORDON.—We offer in evidence a deed made by the Lewiston National Bank, a corporation under the laws of the United States, to the Idaho Trust Company, a corporation under the laws of Idaho, dated January 8, 1910, and recorded January 12, 1910, at the request of the Idaho Trust Company, in the office of the recorder of Nez Perce County, Idaho, in Book 103, page 101, and read the same into the record, as follows:

“No. 50,297.

THIS INDENTURE, Made this eight day of January in the year of our Lord one thousand nine hundred and ten between Lewiston National Bank, a corporation under the laws of the United States, of Lewiston, County of Nez Perce, State of Idaho, the party of the first part, and Idaho Trust Company, a corporation under the laws of Idaho, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollars, gold coin of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors, heirs and assigns, forever, all the following described real estate situated in Nez Perce County, State of Idaho, to wit:

Lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) [1537—1207] in Block Three (3), lots ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), in Block thirteen (13), lots seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12) in Block Fifteen (15) and Lots five (5), six (6), seven (7), eight (8) and nine (9) in Block Sixteen (16) of Nez Perce addition to the City of Lewiston, Idaho, according to the recorded plat thereof, and

The southwest quarter (SW. $\frac{1}{4}$) of Section ten

(10), in Township thirty-nine (39), North of Range Three (3) East of Boise Meridian, in Idaho, containing One hundred sixty acres (160), and

The Southeast quarter (SE. $\frac{1}{4}$) of the Southeast quarter (SE. $\frac{1}{4}$) of Section twenty-six (26) the Southwest quarter (SW. $\frac{1}{4}$) of the Southwest quarter (SW. $\frac{1}{4}$) of Section twenty-five (25) and the North half (N. $\frac{1}{2}$) of the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-five (35) in Township forty (40) North of Range three (3) East of Boise Meridian, in Idaho, containing one hundred and sixty acres (160) and

The Lots numbered two (2), three (3), six (6) and seven (7) of Section Thirty (30) in Township thirty-eight (38) North of Range two (2) East of Boise Meridian, in Idaho containing one hundred and fifty acres and forty hundredths of an acre (150 40/100) and

The lots numbered five (5) and eight (8) and the East half of the Southwest quarter (SW. $\frac{1}{4}$) of Section thirty (30) in Township thirty-eight (38) North of Range two (2), East of Boise Meridian, in Idaho, containing one hundred and sixty acres (160) and

Lots Four (4) and Five (5) in Block Forty-four (44) and Lot Eight (8) in Block Forty-seven (47) in the Town of Nez Perce, according to the recorded plat thereof and

One half interest in Lot Three (3), Section seven (7), Township Thirty-five (35) North of Range five (5) West of the Boise Meridian, and West half (W. $\frac{1}{2}$) of the Southeast quarter (SE. $\frac{1}{4}$) and [1538—1208] the Northeast quarter (NE. $\frac{1}{4}$) of

the Southeast quarter (SE. $\frac{1}{4}$) of Section twelve (12) Township Thirty-five (35) North, of Range six (6), West of the Boise Meridian.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part:

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the Lewiston National Bank has caused its corporate name to be signed hereto by its President and Cashier respectively and its corporate seal affixed the day and year first above written.

LEWISTON NATIONAL BANK.

By FRANK W. KETTENBACH,

President.

By EDWARD C. SMITH,

Cashier.

Signed, sealed and delivered in the presence of

[Lewiston National Bank, Idaho.]

STATE OF IDAHO,
County of Nez Perce,—ss.

On this eight day of January in the year 1910, before me, Ray C. Hyke, a Notary Public personally appeared Frank W. Kettenbach and Edward C. Smith known to me to be the President and Cashier respectively of the corporation that executed the instrument and acknowledged to me that such corporation ——— the same. [1539—1209]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

RAY C. HYKE,
Notary Public in and for Nez Perce County, Idaho.
[Ray C. Hyke, Notary Public, Nez Perce County,
Idaho.]

Filed for record at the request of Idaho Trust Co. this 12th day of January, 1910, at 12:05 o'clock P. M.

W. L. GIFFORD,
County Recorder.
By R. L. Thompson,
Deputy.

Fees, \$1.60.”

ffl

Mr. TANNAHILL.—The defendants severally waive any further identification of the deed offered.

At this time an adjournment was taken until Thursday, September 8th, 1910, at ten o'clock A. M.
[1540—1210]

On Thursday, September 8th, 1910, at ten o'clock, A. M., the hearing was resumed.

By agreement of counsel, an adjournment was thereupon taken until ten o'clock A. M., Friday, September 9th, 1910. [1541—1211]

On Friday, the 9th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

Mr. GORDON.—We offer in evidence a certified copy of Notice of Lis Pendens, entitled *The United States of America, Complainant, vs. William F. Kettenbach and Others, Defendants*, filed for record and recorded in the office of the Recorder of Latah County, Idaho, September 7th, 1909, at 11 o'clock A. M., at the request of Peyton Gordon, and read the same into the record.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document.

Said document is as follows:

[Exhibit 54Q.]

Instrument Number 51,164.

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO
TRUST COMPANY, THE LEWISTON
NATIONAL BANK OF LEWISTON, IDA-
HO, THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-

BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT, KIT-
TIE E. DWYER, POTLATCH LUMBER
COMPANY, ROBERT O. WALDMAN,
Defendants.

Notice of Lis Pendens.

Notice is hereby given that a suit in equity has been commenced, in the above-named court, by the above-named complainant, against the above-named defendants, which suit is now pending; that the object of [1542—1212] said suit is to vacate, annul, set aside and cancel certain United States patents, heretofore issued by the United States of America at the instance and by the procurement of the defendants William F. Kettenbach, George H. Kester, Clarence W. Robnett and William Dwyer, to the following named persons, and for the lands described and set out, after and opposite the name of each person respectively:

ROWLAND A. LAMBDIN: The southwest quarter of section twenty-nine, in township forty-two north of range one west, Boise meridian.

IVAN R. CORNELL: Lots six and seven, and the east half of the southwest quarter of section twenty-seven, in township forty north of range one west, Boise meridian.

FRED W. SHAEFFER: The east half of the northwest quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section twenty-seven, in town-

ship forty north of range one west, Boise meridian.

All of said lands being in the Lewiston, Idaho Land District, and in Latah County, in the State and District of Idaho.

GEORGE W. WICKERSHAM,
Attorney General of the United States, Solicitor for
Complainant.

Dated September 7th, 1909.

Filed for record September 7th, 1909, at 11:00
o'clock A. M. Request of Peyton Gordon.

Fee, \$.60.

AXEL P. RAMSTEDT,
Recorder.

State of Idaho,
County of Latah,—ss.

I, Axel P. Ramstedt, Ex-Officio Auditor and Recorder, in and for said county and State, do hereby certify that the above and [1543—1213] foregoing is a full, true and correct copy of Notice of Lis Pendens, The United States of America vs. William F. Kettenbach et al., as the same appears on record in my office at page 86, volume 2 of Pendency of Action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Moscow, Idaho, this 7th day of Sept., A. D. 1910.

AXEL P. RAMSTEDT,
Ex-Officio Auditor and Recorder.

By Adrian Nelson,
Deputy.

[Seal of Auditor and Recorder of Latah County,
Idaho]

(Said certified copy of *Lis Pendens* was marked by the Reporter as Exhibit 54Q.) [1544—1214]

[Testimony of Joseph Alexander, for Complainant.]

JOSEPH ALEXANDER, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Joseph Alexander?

A. Yes, sir.

Q. What is your business, Mr. Alexander?

A. I am in the general merchandise business.

Q. And you reside at Lewiston, Idaho?

A. I have resided at Lewiston, Idaho, since 1864.

Q. And you have been engaged in business—?

A. Ever since.

Q. Ever since then? A. Yes, sir.

Q. Are you in any way connected, or were you in any way connected with the Lewiston National Bank? A. Yes, sir.

Q. In what capacity?

A. I was director and vice-president.

Q. When were you vice-president?

A. I have been vice-president ever since it has been in existence.

Q. And you are vice-president at present?

A. Yes, sir.

Q. How long have you been a director of the Lewiston National Bank?

A. I have been a director,—I couldn't exactly tell the years, but a number of years.

(Testimony of Joseph Alexander.)

Q. Well, I mean were you a director in 1900?

A. Yes, sir.

Q. And are you one of the directors now?

A. Yes, sir.

Q. You have been a director—? [1545—1215]

A. Always.

Q. Do you know Mr. William F. Kettenbach?

A. Yes, sir.

Q. Were you a director and vice-president of the bank during the whole term of his presidency of the bank? A. Yes, sir.

Q. Do you know Mr. George H. Kester?

A. I know George H. Kester.

Q. Were you vice-president and a director during all the period that he was cashier of the Lewiston National Bank? A. I think I was.

Q. Do you know William Dwyer?

A. I know William Dwyer; yes, sir.

Q. And you know Clarence W. Robnett?

A. Yes, sir.

Q. During the period that Mr. William F. Kettenbach was president and Mr. George H. Kester was the cashier of the Lewiston National Bank by whom was the bank managed?

A. Well, they both worked together whenever I was in the bank.

Q. Sir?

A. Mr. Kettenbach and Kester worked together.

Q. And they had practically the management of the affairs of the bank?

A. Yes, sir, they had the management of the busi-

(Testimony of Joseph Alexander.)

ness. I have never worked—

Q. Now, were you vice-president when Mr. Frank W. Kettenbach was made the president?

A. Yes, sir.

Q. And you served with him, as vice-president, until he retired from the bank within the last six months? A. Yes, sir. [1546—1216]

Q. After he came into the bank who managed the bank? A. Frank Kettenbach.

Q. He had the sole management of the bank, is that correct? A. Yes, sir.

Q. Do you remember the trials had of William F. Kettenbach and George H. Kester and William Dwyer, in the United States court, at Moscow, in the spring of 1907, at which time they were charged with conspiracy to defraud the United States of its valuable timber lands? Do you remember that trial?

A. Well, I don't know anything about it.

Mr. TANNAHILL.—We object to that on the ground that it is irrelevant and immaterial for any purpose.

Mr. GORDON.—Answer the question, please.

A. All I seen was in the paper.

Q. I mean, you know they were being tried for that offense?

A. I remember, yes; I saw what I saw in the paper.

Q. Well, did you read the paper, did you follow that trial pretty carefully?

A. Well, not carefully.

Q. Well, now, at the time they were being tried

(Testimony of Joseph Alexander.)

Kester was the cashier and William F. Kettenbach was the president of your bank, is that correct?

A. Yes.

Q. And you knew of them being convicted as a result of that trial, did you not?

Mr. TANNAHILL.—Allow us the same objection.

A. Well, I heard them talk about it.

Q. I mean, did you ever talk to Kester and Kettenbach about their conviction?

A. Never a word.

Q. Did you ever speak to them about it?

A. No, sir. [1547—1217]

Q. Were you at the directors' meeting that occurred after they were convicted?

A. I was at the directors' meeting several times.

Q. I mean, after they were convicted at Moscow?

A. Not that I can remember.

Q. Do you remember being at the meeting when they retired from the directorate of the bank and gave up their official positions?

A. I think I can remember it. I don't know the exact time. I don't remember when it was. I was at most every meeting that occurred.

Q. And their conviction was never discussed before the directors of the bank?

A. Oh, it might have been.

Q. Don't you remember it?

A. I can't remember it.

Q. Weren't you there when resolutions were passed at the time they retired from the bank?

Mr. TANNAHILL.—We object to that as imma-

(Testimony of Joseph Alexander.)

terial, and not the best evidence.

A. It is too long back to remember for me.

Mr. GORDON.—Q. It has just been three years ago.

(No answer.)

Q. Do I understand, Mr. Alexander, that you, being vice-president of the bank, and the president of that concern being convicted and sentenced for an offense, and the cashier of that institution being convicted and sentenced for an offense, that you never discussed it with them or they with you?

Mr. TANNAHILL.—We object to that as immaterial.

A. No, not that I remember.

Q. And that the matter was never discussed at any of the directors' [1548—1218] meetings?

A. It might have been discussed and I might not have been there at that time.

Q. They were intimate friends of yours, were they not?

A. Well, not any more than any other good citizen, that is all; it was business qualifications.

Q. You were brought into close contact with them in the affairs of the bank? A. Yes.

Q. Do you know anything about the loans that were made to either Kester, Kettenbach or Mrs. Dwyer relative to timber claims they held?

A. No, sir.

Q. That was left entirely to Mr. Will. Kettenbach and Mr. Kester while they were officers of the bank, was it not?

(Testimony of Joseph Alexander.)

A. Well, I don't know who it was left to, but it was never in question before me.

Q. You knew nothing about it? A. No, sir.

Q. Do you know whether those loans were discussed in the directors' room?

A. Not that I can remember; I don't know anything about it.

Q. They were never discussed while you were present, that you know of? A. Not at all.

Q. Do you remember the sale of the Lewiston National Bank, of its stock, to the Idaho Trust Company? A. Yes, sir.

Q. Now, will you state how that transaction occurred?

A. Well, I know when it came up at the directors' meeting.

Q. Did you have any stock at that time?

A. Well, I had Lewiston National Bank stock.

Q. You had at that time? [1549—1219]

A. Yes, sir.

Q. How many shares?

A. I had one hundred shares.

Q. And how much was it worth, a share?

A. Well, I don't exactly remember.

Q. What was the par value of it?

A. What it was worth at the time? The par value was about two fifteen.

Q. Two fifteen, you say? A. At that time, yes.

Q. Was that two dollars and fifteen cents a share?

A. Yes.

The SPECIAL EXAMINER.—You mean, Mr.

(Testimony of Joseph Alexander.)

Alexander, that was the book value, don't you, in place of the par value? A. Yes, sir.

Mr. GORDON.—Q. What was the par value? One dollar a share? A. About.

Q. Then, did you sell your stock or the greater part of it to the Idaho Trust Company?

A. Well, it was transferred; they merged together at the time.

Q. And you transferred how many of your shares to the Idaho Trust Company?

A. Ninety shares.

Q. And that left you just the requisite amount required by law for you to be a director, is that correct? A. Ten shares; yes, sir.

Q. What did you get in lieu of the stock you transferred to the Idaho Trust Company?

A. I got Idaho Trust Company stock.

Q. An equal number of shares? [1550—1220]

A. Yes, sir.

Q. You transferred ninety shares of stock to the Idaho Trust Company, and they issued ninety shares of the Idaho Trust Company stock to you, is that correct? A. Yes.

Q. Are you a director in the Idaho Trust Company? A. No, sir.

Q. Were you ever a director in the Idaho Trust Company? A. No, sir.

Q. I understood you to say that you read in the papers of the conviction of Mr. William F. Kettenbach and Mr. William Dwyer and Mr. George H. Kester?

A. I don't remember exactly about the conviction,

(Testimony of Joseph Alexander.)

but you know how a person is, when he reads these articles he goes through them, whether it was a conviction or not, but I read the articles, as it came out in the "Tribune," and that is all I know, and I have forgotten them now. I couldn't transfer it or say anything about them, because I don't keep these in my mind, what I read in the newspapers.

Q. Do you have no recollection whether or not these men were convicted or not?

A. (No answer.)

Q. Will you answer the question?

A. I don't remember.

Q. Well, don't you know, as a matter of fact, that that is the reason they resigned from the bank?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. I don't know the cause of it.

Mr. GORDON.—That is all. [1551—1221]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Alexander, you said you read in the newspapers something about their being convicted over at Moscow. Did you also read in the papers about the Circuit Court of Appeals reversing that conviction?

A. Yes, sir.

Q. And did you also read in the papers about their acquittal at Boise, in March, 1910? You read it in the papers?

A. I read the article in the Boise paper.

Mr. TANNAHILL.—That is all.

(Testimony of Joseph Alexander.)

Redirect Examination.

(By Mr. GORDON.)

Q. Then you have a distinct recollection of reading of a reversal of the decision of the conviction of these gentlemen at Moscow, is that correct?

A. Yes.

Q. And still you have no distinct recollection of ever hearing of them being convicted, is that also correct? A. No, I couldn't swear to it.

Q. And you lived right here in Lewiston all the time? A. Yes, sir.

Q. And attended regularly the meetings of the directors of the bank? A. Yes, sir.

Mr. GORDON.—That is all. [1552—1222]

[Testimony of Harvey J. Steffey, for Complainant.]

HARVEY J. STEFFEY, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Harvey J. Steffey?

A. Yes, sir.

Q. Where do you reside, Mr. Steffey?

A. Pierce City.

Q. Pierce, Idaho? A. Pierce, Idaho.

Q. And how long have you resided at Pierce?

A. Practically since 1902.

Q. Where did you reside before that time?

A. Spokane, and Lake View, Idaho.

Q. What was your occupation in 1904 and '05 and '06?

(Testimony of Harvey J. Steffey.)

A. I was working in the timber, running a compass and cruising and locating.

Q. Do you know the defendant William F. Kettenbach? A. Yes, sir.

Q. Do you know one of the defendants, George H. Kester? A. Yes, sir.

Q. And do you know one of the defendants, William Dwyer? A. Yes, sir.

Q. How long have you known Mr. William F. Kettenbach? A. I have known him since 1904.

Q. Do you remember when you first met him?

A. Not exactly; no.

Q. As near as you can tell.

A. Some time the latter end of 1904.

Q. And how long have you known Mr. William Dwyer? [1553—1223]

A. About the same length of time.

Q. And Mr. Kester? A. About the same.

Q. Did you ever have any business with Mr. William Dwyer?

Mr. TANNAHILL.—The defendants object to any evidence of the witness relative to any of the transactions regarding timber claims or any of the defendants, in so far as they relate to bills No. 388 and 406, upon the ground that no entry of the witness is involved in either of these particular actions, and no entry that the witness was connected with was involved in either of these particular actions.

A. Yes, sir.

Mr. GORDON.—Q. Now, will you state the first business transactions of any kind that you ever had with Mr. Dwyer?

(Testimony of Harvey J. Steffey.)

A. As near as I can recollect, it was one evening as I was going to Pierce I met Mr. Dwyer on the road, and I spoke to him about getting some money for Miss Lane and her brother to prove up on their timber claims with.

Q. Now, do you remember the approximate date of that? A. No, I do not; I couldn't remember.

Q. Had you ever done any work for him prior to that, or been employed with him or for him or by him in any way? A. No.

Q. Well, now, state what Mr. Dwyer said.

A. Well, after I had stated my business to him, he told me to go and see George Kester at Lewiston.

Q. And did you go to see Kester? A. I did.

Q. What did you tell him?

A. I told him practically what I told Mr. Dwyer at the time.

Q. What did he tell you? [1554—1224]

A. He told me,—he looked the matter up in some papers or books that he had, and told me to tell her at the time she proved up to come around and see him.

Q. Did she go around to see him that you know of?

A. Yes.

Q. Did you go with her? A. No, I did not.

Q. What Mr. and Miss Lane were those, what were their names?

A. Miss Winnie Lane; she lived in Pierce at that time,—and Joe Lane, her brother.

Q. You say he looked up some papers he had in the bank at that time? A. Yes.

Q. Do you know what the papers were?

(Testimony of Harvey J. Steffey.)

A. No, I do not.

Q. Do you know whether they were plats and estimates?

A. I supposed they were plats with reference to these claims.

Q. Now, were you ever employed by Mr. Dwyer in any capacity? A. Yes, sir.

Mr. TANNAHILL.—Mr. Gordon, so that I may know something about this matter, so that I can make a motion if I desire, was this claim he is testifying concerning involved in either of these actions?

Mr. GORDON.—No; I was just leading up to fix a period, that is all.

Mr. TANNAHILL.—The defendants move to strike out all of the witness' evidence relating to the Winnie Lane claim, and conversations in regard to it on the ground that it is irrelevant and immaterial, and not involved in either of these actions.

Mr. GORDON.—Q. Was that before this talk you had with him and Mr. Kester about the Lane claim, or afterwards? [1555—1225]

A. I think it was afterwards.

Q. Now, in what capacity were you employed?

A. Well, running compass and cooking and general timber work.

Q. When was this?

A. I think it was some time in November, 1904, if I am not mistaken.

Q. Well, where were you doing this work, what part of the country?

A. This was in 37-7, where I first went to work for him.

(Testimony of Harvey J. Steffey.)

Q. And how long did you continue working in that community? A. At that time?

Q. Yes.

A. I don't think it was over a week or ten days.

Q. Did you see any of the other defendants, Mr. Kester and Mr. Kettenbach, up in that locality with Mr. Dwyer at that time? A. No, sir.

Q. Did you ever see them up in the woods with him? A. Yes.

Q. How long after this occasion that you have just referred to was that?

A. Oh, it must have been two years afterwards.

Q. Were you doing any work for them?

A. Well, I was with Mr. Kettenbach when he was with Mr. Dwyer at one time.

Q. Where was that?

A. That was—I went out to meet them at Hatch's, and went up on to the North Fork and around through the timber to Pierce.

Q. Do you know what townships you went through? A. Yes, sir.

Q. Will you name them, please?

A. We went through 38-4, 35-5, 37-5, I think that is all.

Q. What were they up there for, what was their mission there? [1556—1226]

A. Well, I understood Mr. Dwyer was showing Mr. Kettenbach the timber they acquired.

Q. And did Mr. Kettenbach say anything about it?

A. Not to me.

Q. I mean in your presence. Did you hear any comment about it?

(Testimony of Harvey J. Steffey.)

A. I understood him to say several times that he was well satisfied with it, that it looked good to him.

Q. Was Mr. Kester up there on any occasion that you know of? A. Not that I was with them, no.

Q. Did you ever see him there?

A. I saw him in Pierce.

Q. Did you ever talk with him in Pierce?

A. No, not in Pierce.

Q. Now, I will ask you whether you and Mr. Kester and Mr. Kettenbach and Mr. Dwyer were ever in on, ever worked together on any timber claims, or had any transactions together concerning timber claims?

A. Mr. Kettenbach never was connected directly with anything that I had to do.

Q. Now, did the other two that you have mentioned? A. Yes.

Q. Well, state the beginning of this connection so far as you can remember it.

A. Well, there was Mr. Kester and Mr. Dwyer and myself at one time were connected with the claim called the Keener claim, in Section 13, 40 and 6 east.

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to the Keener claim, upon the ground that it is not involved in either of these actions, and it is irrelevant and immaterial.

Mr. GORDON.—Q. Now, Mr. Steffey, you remember of having something to do with [1557—1227] what is known as the Myers, the Bonney, the Jolly and the Perkins claims, do you?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. I will ask you whether or not this connection you had with Mr. Dwyer and Mr. Kester in relation to the claim that you mentioned a moment ago was prior to the transaction relative to those last-named claims, the Keener claim?

A. I think it was a short time only.

Q. Now, what was the transaction relative to the Keener claim?

A. Well, the Keener claim was for sale for \$1200.00, and it was a claim that we had no information about, and they asked me what I thought of it, and I told them I knew nothing about it directly, but it was in a good locality and I thought it was worth money, and so they finally concluded to buy it, and pay \$1,200.00 for it, and thought we could sell it for \$3,000.00. So Mr. Kester said that they would cut the profits of \$1,800.00 between us, the three of us, and asked me if I was satisfied, and I told him I was more than satisfied, that I didn't really expect that much, if anything.

Q. Well, that was a claim that had already been entered when you were discussing it, was it not?

A. Yes, sir.

Q. Did you get your share of the profit?

A. I did not.

Q. Now, do you remember the Myers claim?

A. Yes, sir.

Q. Well, now, state the transactions relative to the entry of the Myers claim, and the disposition of it.

A. Well, that was a claim that Mr. Dwyer had contested and won, and he asked me if I had anybody that I could locate on it, or it is possible that I may

(Testimony of Harvey J. Steffey.)

have asked him if he had a claim that I could put somebody on; I have really forgotten. But Mr. Myers,—I told [1558—1228] him I would locate Mr. Myers on it, and I took Mr. Myers out and located him on the claim.

Q. Was there any other conservation before that, was there any discussion as to what you were to do with the claim, what the entryman was to get?

A. Yes.

Q. State what that was.

A. Mr. Myers, I told him—

Q. I mean before you get to Myers. What was your discussion with Dwyer?

A. Well, that is what I was going to say. I told Mr. Dwyer we could get Mr. Myers for about \$150.00, \$100.00 or \$150.00, and he said that was all right, he said I should locate him on it.

Q. Well, did he say that at first, or did he demur a little?

A. No, I think not. He said that was all he could pay.

Q. Do you remember whether or not he said he could get any number of people to locate on that claim for \$100.00?

A. Well, several times he had already told me that, that he could get any number of people for \$100.00 or \$150.00,—\$100.00, I think he said,—that he could get any number of them.

Q. Well, I will ask you whether or not you knew the connection at that time between Dwyer and Kester and Kettenbach with relation to timber claims?

A. Well, I knew that they were working together.

(Testimony of Harvey J. Steffey.)

Mr. TANNAHILL.—We move to strike out that answer of the witness, upon the ground that it is a conclusion, and not a statement of a fact.

Mr. GORDON.—Q. Did you know that they were procuring entrymen to locate on these claims and furnishing them the money, and then having the entrymen convey to them, or one of them?

A. None outside of these claims that I was connected with. [1559—1229]

Mr. TANNAHILL.—We object to that as leading and suggestive, and immaterial.

Mr. GORDON.—Q. Did you have any arrangement with Mr. Dwyer relative to locating entrymen?

A. Yes.

Q. Was that prior to the entry of the Myers claim? A. No.

Q. Well, now, state what that arrangement you had with Mr. Dwyer was.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and no date fixed.

A. Well, there was no arrangement exactly. There was an understanding, though. I had spoken—

Mr. TANNAHILL.—We object to the witness' conclusion about an understanding. What we want is what was said, so that the Court can pass on the question as to whether or not there was an agreement.

Mr. GORDON.—Q. State your understanding, Mr. Steffey.

A. Mr. Dwyer wanted to know if I had any people

(Testimony of Harvey J. Steffey.)

up there that I could locate on claims, and I told him I had good people.

Q. Was that as far as it went, or were the entrymen that you were to locate to do something with the claims after the entries were perfected?

Mr. TANNAHILL.—We object to it as leading and suggestive.

A. I always made that understood with the entrymen myself.

Q. But what was your understanding with Dwyer?

A. Well, that these entrymen would transfer these claims to them at the end of the final proof.

Mr. TANNAHILL.—We move to strike out the answer of the witness, upon the ground that it is a conclusion, and not a statement of the fact. [1560—1230]

Mr. GORDON.—Q. Who was them?

A. These entrymen that I located.

Q. Who was the them that they were to convey to?

A. Mr. Kester and Kettenbach.

Q. Now, what was done that gave you that understanding?

A. Well,—you mean before these entries were made?

Q. Yes. I am speaking of when you were talking with Dwyer.

A. Well, Mr. Dwyer and I had a talk and I had looked at some timber up there, and I told him about it, and told him it was very good.

Q. That hadn't been entered, had it?

(Testimony of Harvey J. Steffey.)

A. It hadn't been entered. And he said, "All right. Get somebody to put on it and tell them we will furnish them the money to prove up on," and he asked me what I could get them for, and I told him \$200.00, and he said that was all right.

Q. That you were to pay each entryman \$200.00?

A. Yes.

Q. And the entryman, after he had made his proof, was to convey to them? A. Yes.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. Well, now, get down to the Myers entry again. What was your first conversation with Mr. Dwyer about the Myers entry?

A. That was a claim he had contested and I told him I would get Myers to locate on it.

Q. Do you remember whether there was a relinquishment on it?

A. No, he had won it at a contest.

Q. Did he have a relinquishment?

A. Mr. Dwyer?

Q. Yes. [1561—1231]

A. Well, I couldn't say whether it was a relinquishment or not; he had some paper from the Government that he signed, and Mr. Myers gave his note for,—I really don't know,—I think \$375.00, and if I remember right, this paper was signed over to Mr. Myers, Mr. Dwyer signed the paper at least; I know he signed the paper.

Q. That was before Myers was shown on to the claim, was it not? A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. You went to see Myers. What was your arrangement with Myers?

A. I told him I would give him \$150.00, and he was to deed the claim to whoever I said.

Q. And that was before you ever showed him the claim? A. Yes, sir.

Q. I will ask you whether or not Mr. Myers agreed to that arrangement? A. He did.

Q. Did you take Myers out to the claim?

A. Yes, sir.

Q. Before you took Myers to the claim did you convey this intelligence of Myers' agreement with you to Mr. Dwyer?

A. No, I think not, although that was understood before I left Lewiston. I left Lewiston and went up and got Mr. Myers and took him out to the claim.

Mr. TANNAHILL.—We move to strike out the answer of the witness relative to what was understood, as a conclusion, and not a statement of fact.

Mr. GORDON.—Q. Before you went to see Myers, however, you had had this talk with Dwyer in which he said that he would pay so much for the entryman to go on the claim?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. That is correct, is it not, Mr. Steffey? [1562—1232] A. Yes, sir.

Q. And then you went to see Myers and made this arrangement with him that you have detailed?

A. Yes, sir.

Mr. TANNAHILL.—The same objection.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. Did I understand you to say you took Mr. Myers out to the claim? A. Yes, sir.

Q. Did you come to Lewiston to the land office with him? A. No, he came alone.

Q. Do you remember who furnished his expenses of coming here? A. I did.

Q. Do you remember how much you gave him?

A. No, I do not.

Q. Can you approximate it?

A. I think it was \$10.00.

Q. Did you tell him to come to see anyone here?

A. No, it wasn't necessary, to file, to see anybody. I think I suggested that he go to somebody and have the papers made out for him, but who it was I don't know.

Q. Did you give him a description of the timber claim? A. Yes, sir.

Q. Do you remember whether you gave him the money for the filing fee and the advertising?

A. Well, I paid the advertising fee myself.

Q. Then did you see him any time between the filing and final proof? A. Oh, yes.

Q. Did you see Dwyer in the meantime?

A. Yes, sir.

Q. Now, did you make any arrangement with anyone about getting [1563—1233] the money for final proof? A. Yes, sir.

Q. With whom was that made?

A. Well, the arrangement I made with Mr. Dwyer.

Q. Was the arrangement that you refer to, now, was that the one you made at your first conversation

(Testimony of Harvey J. Steffey.)

with him about this claim? A. Yes, sir.

Q. Did you see him afterwards, before the final proof of Myers, relative to the money for final proof?

A. Mr. Dwyer?

Q. Yes. A. Oh, I saw him frequently.

Q. Did you get the money for Myers to make his final proof? A. I did.

Q. Now, state how that transaction occurred?

A. I went to the bank and drew the money, gave my personal check for it, and gave it to Mr. Myers in cash.

Q. Did you have any arrangement by which you could draw your check?

A. If I remember right, Mr. Dwyer told me to do it.

Q. Do you remember whether you had sufficient money in bank to pay this check?

A. No, I did not.

Q. Did you have any talk with either Mr. Kester or Mr. Kettenbach or make any arrangement with them relative to drawing for that purpose?

A. No, I never had no talk with either of them about drawing my check.

Q. Did you have any talk with them about getting money for these people to make final proof?

A. Not for Mr. Myers.

Q. Did you about other entrymen that you had?

A. Yes, sir. [1564—1234]

Q. Well, you furnished Mr. Myers the money with which to make his final proof, did you not?

A. I did.

(Testimony of Harvey J. Steffey.)

Q. Do you remember whether there was anything said between you and Mr. Myers at the time he was to make his original entry as to whether or not you had an agreement with him to sell?

Mr. TANNAHILL.—We object to that as calling for the conclusion of the witness, and not a statement of fact, and leading and suggestive.

A. Well, yes, it was perfectly understood between Mr. Myers and myself that he was to deed the claim to whoever I said.

Q. I will ask you directly, did you specifically impress upon him that you didn't have an agreement?

A. Yes, I think I did.

Q. Did you have any purpose in doing that?

A. Yes, sir.

Q. What was the purpose?

A. Well, to protect myself and Mr. Dwyer and Mr. Kester and Mr. Kettenbach as much as possible.

Q. Did anyone suggest that you should tell him that? A. No, I think not.

Q. Now, did you get a conveyance from Mr. Myers after he made proof, for this timber claim?

A. I didn't understand.

Q. After Mr. Myers proved up on his claim did you get a deed of conveyance from him?

A. Yes; some time afterwards.

Q. How long afterwards, do you remember?

A. No, I don't really remember.

Q. Several months?

A. Yes, some months, two months at least.

Q. Now, state what transpired then. Did you go

(Testimony of Harvey J. Steffey.)

to see him or [1565—1235] did he come to see you?

A. No. Colonel Todd and I went down from Pierce to his place, and he made out the deed before Colonel Todd, as notary.

Q. To whom did he convey the land?

A. Kettenbach and Kester.

Q. Did you pay him anything then?

A. No, I had already paid him some on account.

Q. How much did you pay him for his claim?

A. A hundred and fifty dollars.

Q. Was that the agreement you had with him before he entered? A. Yes, sir.

Q. Now, did you ever get your money out of the claim?

A. Yes, I got some out of that claim.

Q. Now, state what you got out of it?

A. I think I got \$75.00.

Q. Now, had you talked to Kester or Kettenbach before Myers made this deed, relative to this claim?

A. No, sir.

Q. And it was in accordance with your original understanding with Dwyer that you had this claim deeded to Kester and Kettenbach? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. From whom did you get your \$75.00? A. From Mr. Dwyer.

Q. He gave you the \$75.00?

A. Well, that among other items that I put in my bill was put in.

(Testimony of Harvey J. Steffey.)

Q. Did he give you a check, or did he pay you in cash? A. He always paid me in check.

Q. Do you know whose check it was?

A. His own check. [1566—1236]

Q. To whom did you deliver the Myers deed?

A. I think it was sent by mail to the bank.

Q. Well, did you send it?

A. I believe I did.

Q. And did you send it to the bank or to someone in the bank?

A. Well, I have forgotten now. I think I sent it to the bank, the Lewiston National Bank.

Q. Do you know whether you enclosed a letter with it? A. No, I do not.

Q. Now, did you locate any other entrymen on this arrangement you had with Dwyer?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness, and not a statement of fact.

A. I did.

Q. Now, state who the entrymen were.

A. There was Clinton Perkins, Frank Bonney, James Jolly, Charles Loney, Mrs. Loney, and Mrs. Jolly.

Q. Now, do you remember which one you located after you located Myers, who was the next one, as near as you can remember?

A. Mrs. Myers I located next.

Q. Now, state what your arrangement was with Mrs. Myers?

A. That I was to guarantee that she would make

(Testimony of Harvey J. Steffey.)

\$150.00 on her claim, and I was to stand all expenses, and she was to deed it to who I said.

Q. And you had that conversation, that arrangement with Mrs. Myers personally? A. Yes.

Q. Did you take her out?

A. I had the conversation more directly with her husband; of course she was present.

Q. And that is Mrs. Jannie Myers? [1567—1237] A. Jannie Myers.

Q. And she is the wife of the Charles Myers—

A. Yes, sir.

Q. —whom you have referred to? A. Yes, sir.

Q. Now, did you take Mrs. Myers to the timber claim?

A. No, I didn't take her on the claim, no. Her brother in law, Mr. Gaffney, took her on the claim.

Q. Mr. who? A. Mr. Gaffney.

Q. Did you procure him to take her to the claim?

A. Yes. The claim was very easy to get to, and I just got him to take her out there.

Q. I will ask you whether or not she agreed to your proposition? A. She did.

Q. Now, just tell what you did with reference to that claim, and what Mrs. Myers did?

A. Mrs. Myers went out on the claim, and came down to Lewiston and filed on it.

Q. Now, did she come alone or did she come with you to Lewiston?

A. I believe her and another lady that I located, Miss Rundell, came together.

Q. Were you here? A. I was.

(Testimony of Harvey J. Steffey.)

Q. I will ask you whether or not you met them after they got here? A. I did.

Q. Do you know who paid the expenses of the trip from the Myers home to Lewiston?

A. I paid Mrs. Myers' expenses.

Q. Do you remember how much you gave her?

A. Well, I gave her \$10.00 for expenses, before she left there; I remember that distinctly. But how much I gave her after she got here— [1568—1238]

Q. Do you remember whether or not you gave her a check? A. No, I gave her \$10.00 in cash.

Q. Do you remember who prepared her filing papers?

A. I think it was either Mr. Kasberg or Mr. Mullen, I have forgotten which.

Q. Do you know who attended to having those papers prepared? A. I did.

Q. Do you remember whether there was a fee paid for preparing those papers?

A. I always did pay a fee.

Q. Do you remember paying that one?

A. Not that one in particular, no.

Q. Well, did you have a standing account with that gentleman? A. Yes.

Q. Do you remember who paid the filing fee of Mrs. Myers' entry?

A. Well, I gave her the money and she paid that herself.

Q. Do you know the description of the land that Mrs. Myers located on? A. Yes, sir.

Q. What was it?

(Testimony of Harvey J. Steffey.)

A. It was the east half of the southeast of section 26, I think.

Q. Wasn't it the west half of the southwest quarter of section 25? A. Yes, I guess it was.

Q. Township 39 north, of range 5 east?

A. Yes, sir, township 38, 5 east.

Q. Now, do you remember the time that Mrs. Myers made her final proof on the claim on which she located?

A. I think it was some time in June.

Q. You remember the occasion? A. Yes.

Q. And had you seen her between the time she filed and the time she made proof? [1569—1239]

A. Yes, sir.

Q. Did you give her any money between the times?

A. I did.

Q. How much did you give her?

A. Fifty dollars, I think.

Q. Do you remember what you gave her that for?

A. Well, that was Mr. Dwyer's suggestion, that if they wanted any money to give them some.

Q. Was it your own money that you gave her, or did you get it from someone else?

A. I gave her a check, I think.

Q. On the Lewiston National Bank?

A. Yes, sir.

Q. Now, do you remember the occasion of Mrs. Myers making her final proof?

A. Not in particular, no.

Q. I mean, do you remember that you met her?

A. Oh, yes.

(Testimony of Harvey J. Steffey.)

Q. Did you arrange to meet her? A. Yes, sir.

Q. Well, state what happened. Did you meet her here, or did you meet her at her home?

A. They came down to Lewiston, and I was here, and I gave her the money to make her final proof with.

Q. Do you remember how much you gave her?

A. Four hundred or two hundred,—I think it was \$250.00.

Q. Was her claim a quarter section?

A. No; an eighty.

Q. A what? A. An eighty acres.

Q. Where did you give her that money?

A. I think it was in the hotel.

Q. One of the hotels here? [1570—1240]

A. Yes.

Q. Did you go to the land office with her?

A. Yes; I think I was one of her witnesses.

Q. Do you remember how long it was after she made her final proof that she made a deed to this property? A. No, I do not; it was some time.

Q. A month?

A. Yes, I think it was more than a month.

Q. State the transaction of the getting of the deed.

A. I think that she made out the deed at the time that her husband made out his deed, if I am not mistaken; I think they were both made out at the same time, before Colonel Todd, the notary.

Q. The Charles Myers deed is dated March, 1906, and the Mrs. Myers deed is July, 1906. Do you remember to whom her deed ran, who was the grantee

(Testimony of Harvey J. Steffey.)

in the deed she made?

A. Kettenbach and Kester.

Q. Had you had any talk with Kettenbach and Kester about making that deed to them?

A. No.

Q. Who suggested it being made to them?

A. Mr. Dwyer.

Q. Had you had any arrangement with any of the defendants other than Dwyer about getting the money for final proof, at the time you got the money for Mrs. Myers? A. Not for Mrs. Myers, no.

Q. Did you pay Mrs. Myers anything the date she made this deed?

A. I think not, at the time she made out the deed. If I remember right, I brought the deed to Lewiston myself, and when I went back I paid her the balance of the money that was coming to her.

Q. How much balance was there?

A. It was somewhere about \$50.00. [1571—1241]

Q. How much did she get out of her claim from you over and above expenses, altogether?

A. A hundred and fifty dollars.

Q. That was in accordance with the arrangement you had with her before she went to the claim, was it not? A. Yes, sir.

Q. You used the expression that Mrs. Myers "made out the deed." What did you mean by that, Mr. Steffey?

A. Well, I didn't mean that she made out the deed; she made the deed to the people, I suppose is what I meant.

(Testimony of Harvey J. Steffey.)

Q. She signed the deed?

A. She signed the deed is what I meant by "made."

Q. Do you know who prepared these deeds that you have referred to, the Charles Myers deed and the Jannie Myers deed?

A. Well, they were prepared here in Lewiston somewhere.

Q. Whom did you get them from?

A. Mr. Dwyer.

Q. Did you get any money for the Jannie Myers claim? A. No.

Q. Did you get the money that you had advanced?

A. Oh, yes.

Q. From whom did you get that?

A. Mr. Dwyer.

Q. How much did you get?

A. Well, I simply made an item of all the expenses that I went to, and when I turned in my expense account it was all lumped together, and he usually gave me a check for the whole thing.

Q. That was for each claim?

A. Well, not each claim altogether, but the whole thing that I did.

Q. I mean, did you have more than one settlement with Mr. Dwyer? A. Oh, yes.

Q. Do you remember whether, on the Myers claim, you got anything [1572—1242] over and above what you had expended on it? A. No.

Q. You say you didn't?

A. I don't think I did. I believe I did, too. That was the claim that Mr. Dwyer agreed that he could

(Testimony of Harvey J. Steffey.)

pay so much for the claim, and I think it was \$150.00, and I asked him if he couldn't pay any more than that, and he said no, he could get plenty of people to put on it for less than that.

Q. Was that conversation before you located Mrs. Myers? A. Yes; before I located Mrs. Myers.

Q. I show you a check, drawn on the Lewiston National Bank, dated July 10, 1906, in the sum of \$10.00, payable to the order of Jannie M. Myers, and signed H. J. Steffey, and ask you if that is your signature to that check? A. Yes, sir.

Q. Is that one of the checks that you gave to Mrs. Myers, in relation to her entry? A. Yes, sir.

Mr. GORDON.—We offer the check in evidence.

Said check was thereupon marked by the stenographer as Exhibit 55.

Mr. TANNAHILL.—We object to it in so far as it relates to bills No. 388 and 406, upon the ground that the Myers entry is not involved in either of these two particular actions.

Mr. GORDON.—Q. I show you a check, dated January 23, 1906, on the Lewiston National Bank, drawn to the order of Charles S. Myers, in the sum of \$75.00, signed H. J. Steffey, and endorsed Chas. S. Myers, and ask you if that is a check you gave Charles S. Myers in the transaction you had with him relative to the taking up and purchase of his timber claim? A. Yes, sir.

Mr. GORDON.—We offer that check also in evidence. [1573—1243]

Said check was thereupon marked by the sten-

(Testimony of Harvey J. Steffey.)

ographer as Ex. 56.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—I show you a check dated March 20, 1906, to the order of Charles S. Myers, in the sum of \$40.00, signed H. J. Steffey, and endorsed Chas. S. Myers, and marked "Paid April 19, 1906," stamped by the Lewiston National Bank, and ask you if that is a check that you gave Mr. Myers as a part of the transaction you had with him in taking up and purchasing his timber claim? A. Yes, sir.

Mr. GORDON.—We offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 57.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. I show you another check, dated March 20, 1906, drawn on the Lewiston National Bank, to the order of Charles S. Myers, for \$45.45, signed H. J. Steffey, and endorsed Chas. S. Myers, with the stamp of the Lewiston National Bank on the front of it, marked Paid April 19, 1906, and ask you if that is another check that you gave Mr. Myers in the transaction you had with him relative to his timber claim? A. Yes, sir.

Mr. GORDON.—We offer that in evidence also.

Said check was thereupon marked by the stenographer as Ex. 58.

Mr. TANNAHILL.—The defendants severally object to the admission of any of the checks just offered in evidence, in so far as they relate to bills No. 388 and 406, upon the ground that the entry of the witnesses in whose favor the checks are drawn are not

(Testimony of Harvey J. Steffey.)

involved in either of these actions, and it is irrelevant and immaterial.

At this time an adjournment was taken until 2 o'clock P. M. [1574—1244]

At two o'clock P. M. the hearing was resumed.

HARVEY J. STEFFEY, a witness heretofore called in behalf of the complainant, and duly sworn, being recalled in behalf of the complainant, testified as follows, to wit:

Mr. GORDON.—Mr. Tannahill, will it be agreed between us that the Myerses—the Jannie Myers that he is talking about, the witness he is testifying to, and the Charles Myers that he has testified concerning—are the same Myerses whose entries were put in, and who testified on the stand in behalf of the Government?

Mr. TANNAHILL.—Yes.

Direct Examination (Continued).

(By Mr. GORDON.)

Q. Now, Mr. Steffey, the next claim, according to the dates that these entries were made, that was located, is the James T. Jolly entry. You know James T. Jolly, do you? A. Yes, sir.

Q. And you know Charles E. Loney?

A. Yes, sir.

Q. No—the next claim, instead of those two, seems to be Effie A. Jolly. The entry was made March 23, 1906. Do you remember Mrs. Effie A. Jolly?

A. Yes, sir.

Q. And is she the wife of James T. Jolly?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. Now, do you remember anything in connection with their claims? A. Yes, sir. I located them.

Q. Now, did you have any arrangement with Mr. Dwyer relative to [1575—1245] those entries?

A. Yes, sir.

Q. Separate and distinct from the first arrangement you had with him? A. Yes, sir.

Q. Was this a distinct arrangement?

A. Yes. Oh, yes.

Q. Did you—

A. It was distinct from the two Myers claims.

Q. They were? A. Yes, sir.

Q. Now, tell about the Jolly entries. What was said and done concerning them?

A. Well, I told Mr. Dwyer that there were two claims there, rather different claims as to value, and that I had a couple of people that I could put on them, and he said “All right; locate them.”

Q. Did you tell him what arrangement you could make with the people you could put on them?

A. Yes, sir.

Q. What did you tell him?

A. I told him that they would locate them for \$200.00, and deed them over to them—to whoever he said, or whoever I said.

Q. And what else did you do, with regard to the money that they were to have over their expenses?

A. I paid all of their expenses. That was the agreement.

Q. I didn't mean that. Did you have any conversation with Dwyer about that?

(Testimony of Harvey J. Steffey.)

A. Yes; that was the understanding, that all these people should get so much and their expenses.

Q. And what did Dwyer say?

A. Well, about these particular claims I don't remember that he said anything; but that was agreed that that was all right. [1576—1246]

Mr. TANNAHILL.—I move to strike out the statement of the witness as to the understanding or agreement, as a conclusion and not a statement of the fact.

Mr. GORDON.—Q. Now, have you told what you were to get for locating these people and having them turn their claims over?

A. No; there was no agreement or understanding what I was to get.

Q. Well, was there anything said about it?

A. Well, only in an indirect way.

Q. Well, now, by whom was it said, and what was said? A. Just Mr. Dwyer.

Q. And what did he say about it?

A. Well, that I would be all right; I would get my share.

Q. You were to have a share out of the proceeds?

A. Well, yes, that is the way I understood it. There was no direct understanding—never was—between us, about that.

Q. Now, in these claims that you were to locate, and did locate, I want to know exactly what the understanding between you and Mr. Dwyer was, as to what each entryman was going to get over and above what it would cost him.

(Testimony of Harvey J. Steffey.)

Mr. TANNAHILL.—We object to the question, upon the ground that it calls for a conclusion of the witness and not a statement of the fact, and irrelevant and immaterial.

Mr. GORDON.—Read the question over again. The objection is so long I can't remember what the question was.

The Reporter thereupon repeated the last question.

Mr. GORDON.—Q. How much was each entry-man to get? A. \$200.00.

Q. And what was to be included in what the cost of the entry would be?

A. Well, that was outside of any expenses that he was to be put [1577—1247] to. They was to get \$200.00 clear.

Q. Now, their expenses were the railroad fare?

A. Yes.

Q. And the original entry? A. Yes.

Q. And the \$400.00 for final proof. Now, what expenses were there over that?

A. Well, there was the publication.

Q. Now, was there a locator's fee? A. No.

Q. Added to that?

A. No; there was no locator's fee added to that.

Q. You never charged a locator's fee at all?

A. No.

Q. Now, tell us all that you can remember relative to the entry of Effie A. Jolly, from the very first thing that was done concerning that entry?

A. Well, I went and looked at the claims—that

(Testimony of Harvey J. Steffey.)

claim and Mrs. Loney's claim—they are adjoining claims.

Q. Now, what Mrs. Loney is that?

A. Mary A. Loney.

Q. Yes?

A. And I spoke to Mr. Dwyer about it and told him the character of the claims as near as I could, what they were, and if I remember right he said, "Locate them, anyway"; and in the meantime we went up and looked at them.

Q. Who went and looked at them?

A. Mr. Dwyer and myself.

Q. Yes.

A. And, as I say, they were not exceptionally good, and he seemed to not care for them very much, and we had some talk about it, so I suggested, "Well," I says, "Let them prove up on it and just pay [1578—1248] them that, and I won't want any interest in them at all, or, I won't want anything for locating," and he said, "All right, let them go ahead and locate."

Q. Now, was that conversation before you had taken these entrymen to the claims?

A. I don't know now whether that was before or afterwards; I think it was afterwards—after I had taken them and located them; I am quite sure it was.

Q. Now, did you talk to him about these Loney claims before you had located them? A. Yes.

Q. The Loney and the Jolly claim?

A. The Mrs. Loney and Mrs. Jolly claim; I had spoken to him about them.

Q. And are those the ones that you say you told

(Testimony of Harvey J. Steffey.)

him were not so very good?

A. Yes, those are the ones.

Q. Now, what did he say to do? Now, I am talking of before you had ever taken the entrymen to the claim or they had filed any of their papers?

A. He said to go ahead and locate them anyway.

Q. Now, was there anything said at that time as to what was to be paid to the entrymen for their right, or their claim? A. \$200.00.

Q. Now, what arrangement did you have with Mrs. Mary A. Loney and Mrs. Jolly, if any?

A. I guaranteed them \$200.00 above all expenses.

Q. And was anything said about who was to furnish the money?

A. No. No, I didn't—well, I led them to think that I would furnish the money.

Q. Well, did they locate together?

A. Yes. [1579—1249]

Q. Or did they attend to it together?

A. They came down together, and I took them on the claims together.

Q. That is Effie A. Jolly—

A. —and Mary A. Loney.

Q. You took them over the claims together?

A. Yes, sir.

Q. And did you come down to Lewiston with them?

A. I believe I did, yes.

Q. Now, do you remember who paid the expenses of that trip into the timber and then down here to file the sworn statement and other papers?

A. I did.

(Testimony of Harvey J. Steffey.)

Q. And do you know who prepared their filing papers?

A. It was either Kasberg or Mr. Mullen.

Q. And did you pay for that? A. I did.

Q. Do you remember who paid the filing fee for those two entries and the publication? A. I did.

Q. And do you know whether they were notified at the time proof was made?

A. Mrs. Loney and Mrs. Jolly?

Q. —was to be made?

A. Mrs. Loney and Mrs. Jolly?

Q. Yes. A. Yes.

Q. Who notified them?

A. Well, I don't think it was necessary to notify them. The publication notice stated when the final proof was to be made.

Q. Well, did you meet them, or see them?

A. Yes; I came down with them. [1580—1250]

Q. And who paid that expense? A. I did.

Q. Railroad fare and all? A. Yes, sir.

Q. And who paid the money that was paid in the land office for the purchase of this land?

A. I gave them the money.

Q. How much did you give them?

A. I think it was \$450.00 apiece.

Q. And was that the same day that they made proof? A. Yes, sir.

Q. And where did you get the money from?

A. I got it from the Lewiston National Bank.

Q. And how did you get it from the Lewiston National Bank? A. I gave my check for it.

(Testimony of Harvey J. Steffey.)

Q. Do you know whether your account was good for it at that time?

A. Well, my check was good for it.

Q. I mean was your account sufficiently large to meet a check of that size at that time?

Mr. TANNAHILL.—We object to that, on the ground that the account is the best evidence.

Mr. GORDON.—Not necessarily, sir. It might be in some banks, but not always in the bank to which you have reference.

The last question was thereupon repeated by the Reporter.

WITNESS.—No.

Mr. GORDON.—Q. And did you have any arrangement about overdrawing your account?

A. Mr. Dwyer told me to.

Q. And what did he tell you about it?

A. Just to give them my check.

Q. Did he say whether or not it would be protected?

A. I think very likely he did. [1581—1251]

Q. Well, do you remember? Do you have any distinct recollection? A. No, I don't.

Q. Do you know how much money you gave Mrs. Jolly and Mrs. Loney for their expenses when they made proof? A. No, I don't—

Q. I mean aside from what they paid in the land office? I mean for their trip to Lewiston and returning to their homes?

A. Oh! I think it was \$25.00 or \$30.00, if I remember correctly.

(Testimony of Harvey J. Steffey.)

Q. Apiece, or—

A. No; between the two of them. It possibly may have been \$35.00.

Q. Now, did you have anything to do with the conveyances by these two entrymen that you have referred to, to Kester and Kettenbach? A. I did.

Q. Now, state what you had to do with that transaction.

A. I had the deeds made out to Kester and Kettenbach, and I think they were sent to the bank.

Q. Now, did you have the deeds prepared?

A. I don't remember now whether the deeds were prepared down here or prepared up there; I have really forgotten.

Q. And did you go to see these people by yourself to get the deeds executed, or did you go with someone?

A. I think they were—no, I didn't go with them.

Q. Did anyone go with you to see about getting deeds?

A. Not when they went and executed them before a Justice of the Peace or Notary.

Q. Well, any time afterwards or before that?

(No answer.)

Q. I mean did Mr. Dwyer ever go with you on any occasion to see any of these entrymen? [1582—1252] A. No, he didn't.

Q. And did you pay either one of these ladies anything when you obtained the deed from them?

A. I think I did. I gave them a balance of what was due them.

(Testimony of Harvey J. Steffey.)

Q. And what was due them?

A. \$25.00 or \$50.00 apiece.

Q. And how did you reckon that \$25.00 or \$50.00 apiece was due them?

A. I had already advanced them money on those—well, their claims were held up—the final receipt was held up; and in talking the matter over with Mr. Dwyer one time he told me if they wanted any money why to let them have it.

Q. And all that you advanced them would amount to how much? A. \$200.00.

Q. Did you ever have any talk with any of these entrymen as to how much they were to get, other than the first time that you broached it to them?

A. No, sir.

Q. Before entry? A. I did not.

Q. And when you went to get the deed, it was under the original arrangement, was it not? A. Yes, sir.

Q. Nothing was said at that time about how much they were to get?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. I say at the time they made the deed nothing was said about how much they were to get?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, sir.

Mr. GORDON.—Q. And did any of them have any complaint as to the amount you [1583—1253] were giving them?

Mr. TANNAHILL.—Note the same objection.

(Testimony of Harvey J. Steffey.)

WITNESS.—None whatever.

Mr. GORDON.—Q. They took just what you gave them?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Mr. Steffey, I show you a check dated December 4, 1906, on the Lewiston National Bank, to the order of E. A. Jolly, in the sum of \$50.00, signed H. J. Steffey, endorsed E. A. Jolly and J. L. Coonz, and marked paid December 18, 1906, by the Lewiston National Bank stamp, and ask you if that is a check which you gave Mrs. Effie A. Jolly in connection with the purchase of her timber transaction? A. It is.

Mr. GORDON.—I will offer that check in evidence.

Said check was thereupon marked by the Reporter as Exhibit 59.

Mr. GORDON.—I show you a check dated February 28, 1907, on the Lewiston National Bank, to the order of E. A. Jolly, in the sum of \$25.00, signed H. J. Steffey, endorsed E. A. Jolly and W. J. Todd, and Pay the Lewiston National Bank, Lewiston, Idaho, or order. Idaho Mercantile Co.. A. J. Campbell. And I will ask you if that check was drawn by you?

A. Yes, sir.

Q. And was that delivered by you to Mrs. Jolly as expense money, or a payment in any way for the timber entry?

A. I think it was a partial payment of what was due her for the entry.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—I offer that check in evidence, also.

Said check was thereupon marked by the Reporter as Exhibit 60.

Mr. GORDON.—Q. I will show you a check dated July 13, 1906, on the Lewiston [1584—1254] National Bank, payable to the order of Charles E. Loney for \$5.00, signed H. Steffey, and endorsed Charles E. Loney and Charles S. Myers, and ask you if you signed that check. A. I did.

Q. And you delivered that to Mr. Charles E. Loney in connection with the transaction you had with him relative to his timber entry?

A. I think not. I don't think that check had any reference to his timber entry. It was a matter that he was working for me—he did some work for me.

Q. I show you a check dated December 4, 1906, drawn on the Lewiston National Bank to the order of Mary A. Loney in the sum of \$50.00, signed H. J. Steffey, and endorsed Mary A. Loney and J. L. Coonz, and the stamp of the Lewiston National Bank marked Paid December 18, 1906, and ask you if you signed that check. A. I did.

Q. And did you deliver it to Mrs. Mary A. Loney?

A. I did.

Q. And what was that for?

A. That was a payment on her timber claim.

Mr. GORDON.—We offer that check in evidence also.

The Reporter thereupon marked said check as Exhibit 61.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. I show you a check dated February 28, 1907, payable to the order of Mary A. Loney, in the sum of \$25.00, signed H. J. Steffey, and endorsed Mary A. Loney, W. J. Todd and F. Roos, Jr., with the paid stamp of the Lewiston National Bank on the front of it, dated March 27, 1907, and ask you if you signed that check. A. I did.

Q. And did you deliver it to Mrs. Loney?

A. I did.

Q. And was that in connection with her timber entry? A. Yes, sir. [1585—1255]

Mr. GORDON.—We offer that check in evidence.

The Reporter thereupon marked said check as Exhibit 62.

Mr. TANNAHILL.—The defendants severally object to the admission of any of the checks in evidence in so far as they relate to bills No. 388 and 406, upon the ground that the entries referred to by the witness are not involved in either of these actions, irrelevant and immaterial.

Mr. GORDON.—Q. Mr. Steffey, I will ask you whether or not the procuring of Mary Loney and Effie A. Jolly to enter the two timber claims, and the subsequent conveyance to Kester and Kettenbach, was in accordance with your original agreement with Mr. Dwyer?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Answer.

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. And I will ask you whether or not it was the carrying out of an agreement that you had with Mrs. Loney and Mrs. Jolly before they entered these timber claims?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. I find two entries made April 3, 1906; one is Charles S. Loney and the other is James T. Jolly. Do you know anything about those entries, Mr. Steffey?

A. Yes, sir.

Q. Do you know whether or not Mr. James T. Jolly is a relative of Mrs. Effie A. Jolly?

A. He is her husband.

Q. And is Charles Loney the husband of Mary A. Loney? A. Yes, sir.

Q. Now, state what you know about the entry of those two claims. [1586—1256]

A. I located them.

Q. Well, now, did you have any talk with Mr. Dwyer about those claims before locating them?

A. Yes, sir.

Q. Now, state what was said about them.

A. I had looked up the claims, and came down to Lewiston and met Mr. Dwyer and told him I had two exceptionally good claims, and that I had some people to put on them, and he said "All right," and he asked me about the claims, and I told him that one of them was exceptionally good, I thought; and we went into the bank, and he was telling Mr. Kester about the matter, and I compared it to another

(Testimony of Harvey J. Steffey.)

claim called the Dell Marie, and told him one of them was better than that, and I think he asked me if I had anybody to put on them, and I told him I had, and he said if it was better than the Dell Marie claim that we would have a champagne supper.

Q. That was Mr. George H. Kester said that?

A. No; it was Mr. Dwyer that said that. Mr. Kester was inside of the railing of the bank.

Q. Well, did I understand that the discussion as to the comparative merits of these two claims was discussion with Mr. Kester?

A. Right before Mr. Kester, yes.

Q. And this Dell Marie claim that you referred to, is that the Carrie D. Maris claim?

A. That is the one, yes.

Q. Now, this conversation, as I understand, was before any entry had been made on the claim whatever? A. Yes, sir.

Q. And had you seen Mr. Loney and Mr. Jolly about those claims prior to this conversation?

A. I don't think I had.

Q. Well, now, did you see them afterwards?

A. I did. [1587—1257]

Q. And state what you said to them about it.

A. I took them on the claims with the understanding that they were to get \$200.00 over and above all expenses.

Mr. TANNAHILL.—We move to strike out the statement of the witness relative to the understanding, upon the ground that it is a conclusion of the witness, and not a statement of the fact.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. And from what did you get that understanding? What did you say to them?

A. Well, I told them in this way: I guaranteed that they would get \$200.00 over and above all expenses out of their timber entries.

Q. And was anything said about you furnishing the money?

A. Yes; I was to furnish the money, and I was to furnish all expenses.

Q. And you guaranteed them \$200.00?

A. Yes, sir.

Q. Above expenses?

A. \$200.00 above all expenses.

Q. And did they agree to that proposition?

A. They did.

Q. And did you take them to view the claims together? A. Yes, sir.

Q. And were you present when they made their original filing and filed their sworn statement in the land office? A. I think I was, yes.

Q. Do you know whether or not you paid their expenses to go from their homes to Lewiston when they made their filing? A. I did.

Q. And do you know how much it was that you paid? A. No; I can't remember now.

Q. Do you remember whether or not, or do you know who had their filing papers prepared for them? [1588—1258]

A. No. Without referring to some of my notes I couldn't say. Sometimes I had Mullen, and sometimes Kasberg did that, and sometimes Williams.

(Testimony of Harvey J. Steffey.)

Q. Well, do you remember whether you had their papers prepared for them? A. I did.

Q. And you paid whatever expense was incidental thereto? A. Yes, sir.

Q. Do you know who paid the filing fee for those two entries in the land office, and the publication fee?

A. They paid the filing fees; but I paid the publication fees.

Q. Do you mean that they paid the filing fees with their own money?

A. Well, I gave them the money to pay it with.

Q. Now, state how that was.

A. Well, I simply gave them the amount necessary to pay their filing fees.

Q. And was that given together with their expenses down here? (No answer.)

Q. Do you understand me?

A. Yes, I understand. Well, I usually drew a check a little in excess of what was necessary for their filing fees, and they retained the balance. I can't remember exactly what it was now.

Q. And after they filed did you have any talk with them between then and the date of making proof, as to the money for making proof?

A. Well, they understood that I was to get the money for them to prove up on the final proof.

Mr. TANNAHILL.—I move to strike out the statement as to what the witness understood, on the ground that it is impossible for the witness to know what anybody else understood, and it is a conclusion and not a statement of the fact.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—[1589—1259] Q. State where they got that understanding, Mr. Steffey.

A. I told them I would furnish the money for them.

Q. And did you see them the day they made their proof? A. Yes, sir.

Q. Were you at Lewiston, or did you come with them?

A. I came down with them, I think, or I may have been here the day before.

Q. Well, do you remember those two persons on that occasion, whether you did come with them, or whether you just met them here.

A. Well, I met them in Lewiston on the day they made their final proof.

Q. And you don't remember whether you came down with them from their home or not?

A. No, I don't.

Q. And did you meet them by arrangement?

A. Yes, sir.

Q. Or just casually? A. By arrangement.

Q. And did you give them the money to make proof that day? A. I did.

Q. And how much did you give each one of them?

A. \$450.00.

Q. And where did you get that money?

A. From the Lewiston National Bank.

Q. And did you go with them to the land office when they made their proof?

A. I think I did. If I remember right, I was a witness for them.

(Testimony of Harvey J. Steffey.)

Q. Well, what did you give them each that \$450.00 for?

A. To make their final proof with and pay the land office money for the land.

Q. Now, I notice that both of these gentlemen made their final [1590—1260] proof on June 19th, 1906, and that each of them executed a deed to George H. Kester and William F. Kettenbach on July 11th, 1906—less than a month later. Do you remember anything about that transaction of the making of the conveyance to Kester and Kettenbach?

A. I don't remember the details of it, no, not exactly.

Q. Well, did you get the deed from them?

A. I think I did, yes.

Q. Was anyone with you when you got it from them?

A. I don't remember whether there was or not.

Q. Well, do you remember where you got the deed from them? A. I think it was at Fraser.

Q. And that is how far from their home?

A. Fraser is—well, they are right in the Fraser District. It is a mile and a half from the postoffice called Fraser.

Q. Do you remember whether you paid either or both of them any money at the time they made those deeds that I have referred to?

A. I think I paid them the balance that was due them.

Q. Have you any distinct recollection as to when

(Testimony of Harvey J. Steffey.)

you paid them, and how much it was?

A. No, I haven't.

Q. But you paid them altogether how much?

A. \$200.00.

Q. And do you remember whether you delivered the deed to anyone or not—the deeds?

A. No, I don't; I don't remember whether it was sent down by mail or whether it was delivered.

Q. Do you remember—

A. Or whether I brought it down. I couldn't say.

Q. Do you remember whether or not Mr. Dwyer was present when those deeds were made?

A. He was not. [1591—1261]

Q. Did the Myerses and the Jollys and the Loneys live in the same neighborhood? A. Yes, sir.

Q. All somewhere near Fraser? A. Yes, sir.

Q. And how far is that from Lewiston?

A. Well, it is about 55 or 60 miles—55 or 58 miles.

Q. Do you know Mr. Clinton E. Perkins?

A. Yes, sir.

Q. And do you know where he resided in the Spring of 1906? A. Yes, sir.

Q. Where? A. Fraser, Idaho.

Q. Did you have anything to do with his timber and stone entry? A. Yes, sir; I located him.

Q. Well, now, state whether or not you had any arrangement with him for locating him.

A. Yes, sir; he was to get \$200.00 above all expenses for location.

Q. And what was he to do to get the \$200.00?

A. To deed it to who I said.

(Testimony of Harvey J. Steffey.)

Q. You made that proposition, did you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. I will ask you whether or not you made that proposition, Mr. Steffey, to him?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And did he accept it?

A. Yes, sir.

Q. Now, did you go to see Mr. Perkins, or did he come to see you? [1592—1262]

A. Well, I think Mr. Perkins had previous to this spoken to me that he would like to get a timber claim—be located on a timber claim.

Q. Now, did you talk to Mr. Dwyer about this claim before any entry was made of it?

A. Mr. Dwyer and I looked at the claim together.

Q. Was that before the entry was made by Perkins? A. Yes, sir.

Q. And was there any conversation had between you and Mr. Dwyer about this claim? A. Yes, sir.

Q. Well, now, state what that was.

A. We went and looked at the claim together, and he told me I had better get somebody and put on it right away; that it was a good claim, and he didn't want to take any chances of losing it.

Q. And was anything said at that time between you and Mr. Dwyer as to what the entryman could be paid?

A. Not in particular. I don't remember of anything at that time; but the understanding was that

(Testimony of Harvey J. Steffey.)

he was to be paid the same as the other people that I had located.

Mr. TANNAHILL.—We move to strike out the statement of the witness as to the understanding, upon the ground that it is a conclusion and not a statement of the fact.

Mr. GORDON.—Q. I will ask you whether or not that statement or that understanding wasn't gained by you from the fact that you were carrying through a previous arrangement which you had with Mr. Dwyer which you have stated here?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Did you take Mr. Perkins to this timber claim? [1593—1263]

A. I did.

Q. And were you present when he filed his sworn statement?

A. I don't think I was, although I have forgotten.

Q. Well, do you know who paid his expenses from Fraser down to Lewiston? A. I did.

Q. And do you remember who paid the filing fee and his publication?

A. Well, I gave him the money to pay for his filing fee, and I paid the publication notice.

Q. And do you remember the occasion of Mr. Perkins making his final proof? A. Yes.

Q. And do you know where he received the money or got the money with which to make proof?

A. I gave it to him here in Lewiston.

(Testimony of Harvey J. Steffey.)

Q. Do you remember how much you gave him?

A. \$450.00.

Q. Do you remember when you gave it to him?

A. On the day he made his final proof.

Q. Do you know where?

A. No, I don't remember where. It was somewhere on the street.

Q. Did you just meet him incidentally, or did you have an appointment with him?

A. Oh, I had an arrangement with him that I was to be here and give him the money to prove up with.

Q. Did you go to the land office with him when he made his proof?

A. I don't remember whether I did or not. If I was one of his witnesses, I probably did.

Q. Do you remember whether or not this Clinton E. Perkins conveyed his title to someone **after final proof?** [1594—1264]

A. He conveyed it to Kester and Kettenbach.

Q. Did he convey it to Kester and Kettenbach, or just to Kester, or don't you know?

A. I think it was to Kester and Kettenbach.

Q. And did you get him to sign the deed?

A. Why, I have forgotten whether he signed the deed up there or came to Lewiston and signed the deed.

Q. Well, do you remember the incident of his signing the deed, or don't you? A. No, I don't.

Q. Well, do you remember of paying him any money besides the expenses you advanced him?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. How much did you pay him?

A. I think the balance coming to him was somewhere about \$60.00 or \$70.00, and I gave it to him in cash one time after I had left Lewiston.

Q. Well, a balance of what was it you paid him?

A. A balance of the \$200.00 that was coming to him.

Q. Had you been advancing him money?

A. I had.

Q. Between times? A. Yes, sir.

Q. Do you know Mr. Frank J. Bonney?

A. Yes, sir.

Q. And do you know whether or not he took up a claim under the timber and stone act?

A. I do.

Q. What do you know about his entry?

A. I located him.

Q. Did you have an arrangement or an agreement with him?

A. Yes, sir. I agreed—I guaranteed that he would make at [1595—1265] least \$200.00—or, no—I agreed that he would make \$175.00 or over out of his claim.

Q. And what were you to do in the matter?

A. I was to furnish the expenses, and furnish his land office money to pay for the land at the land office.

Q. And what was he to do?

A. He was to locate it and make final proof, and deed it to who I designated.

Mr. TANNAHILL.—I move to strike out all the

(Testimony of Harvey J. Steffey.)

evidence of the witness relative to what it was agreed or understood in relation to this particular claim, upon the ground that it is a conclusion, and not a statement of the fact.

Mr. GORDON.—Q. I will ask you whether or not you told him this—that you made this agreement with him that you have detailed here?

Mr. TANNAHILL.—I object to that as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And did he accept the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Did you carry out your part of the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—I did.

Mr. GORDON.—Q. I will ask you whether or not he carried out his part of the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—He did.

Mr. GORDON.—Q. And did you have any talk with Mr. Dwyer concerning this [1596—1266] Bonney entry, prior to the entry being made?

A. Yes, sir.

Q. Well, was it with reference to this particular entry, or was it in conjunction with the other entries you have told about?

A. Well, I don't think there was anything in particular said about this claim, only that it was a rather good claim.

(Testimony of Harvey J. Steffey.)

Q. And were you present when he made his original filing? A. I don't think I was.

Q. Well, were you at Lewiston at the time he came down to make his filing? A. I think not.

Q. Do you know whether he paid his own expenses down here, and his filing fees, or whether someone paid it for him?

A. I paid them—gave him the money.

Q. Do you remember how much you gave him for that purpose? A. No, I don't.

Q. Can you approximate it?

A. It was \$25.00 or \$30.00.

Q. And do you know where Mr. Bonney got his money with which to make his proof?

A. I gave it to him.

Q. And do you remember where you gave it to him? A. I think it was in the Bollinger Hotel.

Q. And do you remember when it was, relative to the time he made his proof?

A. The day that he made his proof.

Q. And what did you give him the money for?

A. To pay for the land office fees.

Q. To make his proof?

A. To make his proof—final proof.

Q. And do you remember how much you gave him?

A. \$450.00. [1597—1267]

Q. And did you go to the land office with him? Were you one of his witnesses?

A. I have forgotten whether I was or not.

Q. Do you know whether or not Mr. Bonney conveyed this claim upon which you entered him to

(Testimony of Harvey J. Steffey.)

Kester and Kettenbach, later? A. He did.

Q. And do you know who procured the deed?

A. I had Colonel Todd, a notary, go out to his home on the stage route between Pierce and Weippe, and he made out the deed, and I think it was sent by mail to Kester and Kettenbach.

Q. And had you advanced Mr. Bonney any money in the meantime? A. I had.

Q. And did you give him any at the time that he made the deed or afterwards?

A. I think I paid him the balance due him afterwards.

Q. Do you remember how much that was?

A. Why, altogether he got two hundred and twelve some odd dollars out of his claim.

Q. And how much was he to get?

A. He was to get at least \$175.00.

Q. And do you know why it was you gave him \$212.00 instead of \$175.00?

A. Why, I have forgotten—it was some arrangement—I had advanced some money to him, and I think the balance—he wanted \$50.00 or something, and that final \$50.00 just made it come to twelve dollars and something over the \$200.00, so I just let it go.

Q. I will ask you, Mr. Steffey, whether or not these eight claims concerning which you have testified to the entries, were made in accordance with the agreement that you had with Mr. Dwyer that you have detailed, and the conveyances made to Kester and Kettenbach in accordance with the same arrange-

(Testimony of Harvey J. Steffey.)

ment you had with Dwyer, and the arrangement you had with each of the entrymen you have detailed?
[1598—1268]

Mr. TANNAHILL.—Objected to as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Now, did you ever make any other or procure any other person to make an entry under an agreement that you would furnish all the money, and *they* after they made proof they would convey it to whomsoever you would suggest, on the payment of \$200.00? A. Outside of these others?

Q. Yes. A. Yes.

Q. And was that made on the arrangement that you had had with Dwyer? A. Yes, sir.

Q. Well, now, what entry was that?

A. That was the Catherine Irwin and Charles Irwin claims.

Q. And did you have them convey to Kester and Kettenbach? A. No.

Q. To whom did you have them convey?

A. To myself.

Q. And did you have any reason for not carrying out your agreement with Mr. Dwyer?

Mr. TANNAHILL.—Mr. Gordon, if you will just pardon me. Those claims are not involved in the suit, are they?

Mr. GORDON.—No.

Mr. TANNAHILL.—We object to the evidence of the witness relative to those claims, on the ground

(Testimony of Harvey J. Steffey.)

that they are not involved in any of the actions now pending.

The last question was thereupon repeated by the Reporter.

WITNESS.—I did.

Mr. GORDON.—Q. What was it?

A. We had had a little misunderstanding, and I wanted to know [1599—1269] something about what I was to get out of this timber locating, and he said I wasn't to get anything; so I thought I would protect myself the best way I could, and get what I could.

Q. That was after you had had the conveyances of the eight claims made to Kester and Kettenbach?

A. Yes.

Mr. GORDON.—Now, Mr. Tannahill, will you and the other counsel stipulate that the Charles E. Loney entry that the witness has testified concerning, and the Mary A. Loney claim, and the Frank J. Bonney claim, and the James T. Jolly claim, and the Effie A. Jolly claim, and the Charles S. Myers claim, and the Jannie Myers claim, and the Clinton E. Perkins claim, are the same claims that are set out and referred to in Equity Bill No. 407?

Mr. TANNAHILL.—Yes, I am willing to stipulate that. That is the same witnesses who testified here on the stand, isn't it?

Mr. GORDON.—Yes; but if you will remember there are there or four of them who are to be taken in Portland.

Mr. TANNAHILL.—Yes. Well, I say, the wit-

(Testimony of Harvey J. Steffey.)

nesses who did testify are the same witnesses? You refer to these witnesses who did testify?

Mr. GORDON.—Yes; and that the other claims he has referred to are set out in Bill 407.

Mr. TANNAHILL.—Yes.

Mr. BABB.—That's all right.

Mr. GORDON.—Q. Mr. Steffey, after you got these deeds from these various entrymen that you have referred to, did you ever get them to make an affidavit? A. Yes, sir.

Q. Now, state how you happened to get them to make the affidavit.

A. Well, it was after the trials at Moscow.

Q. The trials of who at Moscow?

A. Kester's and Kettenbach's and Dwyer's trials.

[1600—1270]

Q. Now, what did you do?

A. They had a form—a typewritten form—that they told me to take up and have these people sign.

Q. And what was the purpose of that?

A. Well, it was an affidavit saying that they had made no agreement—previous agreement—to dispose of their land; something of that kind.

Q. And what was the purpose of getting that affidavit? Was that explained to you?

A. Well, to protect themselves as much as possible against any appearance of fraud, I suppose. That is the way I understood it.

Q. I will ask you whether or not you told each of these entrymen when you had your conversation with them that you could not make an absolute agree-

(Testimony of Harvey J. Steffey.)

ment with them? A. I think I did; yes.

Q. I show you a blank form of an affidavit and ask you if you have ever seen that paper before?

(Handing document to witness, who examined the same.)

A. I have seen one just like it.

Q. Now, where did you see one just like it?

A. There was some given to me, or to Mr. Dwyer, of that kind, and he told me to take it up there and have those people swear to it before a notary.

Q. That is, the entrymen you had gotten?

A. Yes, sir.

Q. Did you have any discussion with him about it at that time?

A. No, only I believe he said that this was the way it was done in South Idaho, and I understand that Mr. Borah advised him to have this done.

Mr. TANNAHILL.—I move to strike out the statement of the witness as to what he understands, as a conclusion, and not a statement of the fact.
[1601—1271]

Mr. GORDON.—Q. From whom did you get that understanding? A. Mr. Dwyer.

Q. Did Mr. Dwyer make that statement to you?

A. Yes, sir.

Q. And so you had each one of the eight entrymen that you had induced to enter the tracts that you have referred to make an affidavit similar to that?

A. Well, not each of the eight. I think there was some of the entrymen—some of the people that I had located—that had not transferred their claims yet.

(Testimony of Harvey J. Steffey.)

There was only two in particular that I remember that I took those affidavits to and had them sign affidavits after they had conveyed their claims.

Q. Who were they?

A. That is Mr. and Mrs. Myers and Mr. Bonney. There may have been some of the others, but I don't remember it now.

Mr. GORDON.—I offer this in evidence.

Said blank form of affidavit was thereupon marked by the Reporter as Exhibit 63.

Mr. GORDON.—Now, let us go back, Mr. Steffey, to the first talk you had with Mr. Dwyer, before you located any of these entrymen. Tell us what your arrangement with Dwyer was, relative to procuring entrymen to locate on timber claims?

Mr. TANNAHILL.—We object to that as a repetition.

WITNESS.—Well, I can't remember when we first talked about this matter.

Mr. GORDON.—Q. Now, any conversation you had with him relative to procuring entrymen on timber claims, before you entered any of them?

A. I don't remember whether it was the first one or the second one.

Q. Well, any conversation, so long as it is a conversation with [1602—1272] him prior to procuring any entrymen to enter.

A. Well, I couldn't state when that was.

Q. Now, just tell the conversation—not the dates—I am saying the period.

A. Well, the first time was the Charles S. Myers

(Testimony of Harvey J. Steffey.)

would get timber if they had the opportunity that he had; that he was getting a third interest, and all his expenses paid.

Q. Now, did he tell you with whom he was interested, and from whom he was getting this third?

A. Yes, sir.

Q. Who did he tell you?

A. The bank—the Lewiston National Bank.

Q. Well, did he name the bank, or did he name any persons?

A. Well, I think possibly he did—Kester and Kettenbach— [1604—1274] because I remember asking him if he had had any trouble in getting the Lewiston National Bank interested in this, and he said, “Not a bit.”

Q. Well, what else did he say? Did he tell you why?

A. Well, he said he had made some deal, I think up in the Collins District, or in the St. Maries country, and they had made a nice little piece of money out of it.

Q. Now, who is “they”?

A. Kester and Kettenbach, or the Lewiston National Bank.

Q. And was Dwyer in on that? A. Yes, sir.

Q. And did Dwyer tell you that? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. BABB.—And the Bank objects to that, because it is a statement made outside of its presence, or the presence of any of its officers.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. Mr. Steffey, I understood you to say that you paid for all the advertising for these eight claims that have been referred to?

A. Yes, sir.

Q. And who did you pay?

A. I usually made out a check and gave it to Colonel Todd of the Pierce City Miner.

Q. And was that the paper that the advertisements were made in? A. Yes, sir.

Q. Mr. Steffey, I show you a check dated February 5, 1906, drawn on the Lewiston National Bank to the order of William J. Todd in the sum of \$10.00, signed H. J. Steffey. Do you know whether that check was given to Mr. Todd in payment of an advertising bill of one of these claims?

A. No; I couldn't say. There was other transactions between Mr. Todd and myself. I couldn't—
[1605—1275]

Q. You don't know whether it is or not?

A. Not that check; no.

Q. Now, will you look through these other checks there and call the dates, and any one that you know of that you used for that purpose. If you can't remember it, just say so.

A. Yes, sir; there is one on March 19th.

Q. Signed H. J. Steffey? A. Yes, sir.

Q. To W. J. Todd, for \$16.00?

A. Yes, sir. There is another one of March 23d, for \$16.00.

Q. That is also payable to Colonel Todd?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. Here is another one of April 24th, for \$16.00?

A. Yes, sir.

Q. And that is also payable to W. J. Todd, and signed H. J. Steffey?

A. Yes, sir.

Q. And here is one of April 20th, for \$8.00, payable to W. J. Todd, and signed H. J. Steffey?

A. Yes, sir. That is all that I can remember that I gave him for publication.

Mr. GORDON.—All these checks are drawn on the Lewiston National Bank, and we offer the four checks in evidence.

Mr. TANNAHILL.—The defendants severally object to the admission of the checks in evidence in so far as they relate to Bills 388 and 406, upon the ground that the entries are not involved in these two particular actions, and they are irrelevant and immaterial.

The Reporter thereupon marked said checks as Exhibits 64, 65, 66 and 67.

Mr. GORDON.—Q. Now, do you know what these other two checks were for that you hold? [1606—1276]

A. One of them was in part payment for his services in going out to Mr. Myers' place and making out the deed, or the affidavit, on their claims, and I couldn't say which.

Q. Which check was that?

A. Well, they are both for \$20.00.

Q. Do you remember giving him a \$20.00 check for going out there to Mr. Myers's? That one is dated December 21, 1906, and this one is dated March 10, 1907.

(Testimony of Harvey J. Steffey.)

A. I think it was the one dated December.

Mr. GORDON.—We will offer them both in evidence, anyhow. You signed both of these checks and delivered them to Mr. Todd?

A. Yes, sir

Said checks were thereupon marked by the Reporter as Exhibits 68 and 69. [1607—1277]

Mr. GORDON.—Q. Mr. Steffey, did you ever have any talk with Mr. Kester or Mr. Kettenbach relative to giving you authority to draw on the bank, whether or not your account was good or not, in putting up the money for these several entrymen?

A. Only once, with Mr. Kettenbach.

Q. Did you ever have any with Mr. Kester?

A. No, sir.

Q. Now, what was this talk about?

A. Well, this was about the money for the proving up of Mr. Loney and Mr. Jolly. I had spoken to—Mr. Dwyer wasn't in Lewiston at that time, and I spoke to Mr. Kettenbach about it, and he said he would make arrangements to have the money at the Idaho Trust Company, and so I paid no more attention to it, and told Mr. Jolly and Mr. Loney to go to the Idaho Trust Company and tell them who they were, and they would get their money. And after while I went around and saw them in front of the building and asked them what was the matter, and they said the man in there didn't know anything about it, and I stepped inside and spoke to Mr. Smith and—

Q. That was Mr. Smith, the Secretary of the Idaho Trust Company?

(Testimony of Harvey J. Steffey.)

A. Yes, sir. And asked him if there had been any arrangements made to leave any money there for Mr. Loney and Mr. Jolly, and he said there hadn't, and I went over to the Lewiston National Bank and saw Mr. Kettenbach—he was there—and he said he couldn't make arrangements with Mr. Smith, but he would get it, and told me to make out my check for the amount, and I did, and I got the money and he gave it to me.

Q. Did you tell him anything about the arrangements you had with Dwyer?

A. Mr. Kettenbach?

Q. Yes. A. I did not. [1608—1278]

Q. Did he know what you wanted the money for?

A. Yes, sir.

Mr. TANNAHILL.—We object to that and move to strike out the answer, on the ground that the witness can't know what Mr. Kettenbach knew.

Mr. GORDON.—Q. How did you know that Mr. Kettenbach knew about it?

A. Well, he was familiar with everything I was doing, and told me to get the money, and knew what I wanted it for, and knew these people were there to make their final proof that day.

Mr. TANNAHILL.—We move to strike out the statement as a conclusion and not a statement of fact. He can't know what Mr. Kettenbach knew or thought or anything of the kind.

Mr. GORDON.—Q. How did you know that he knew that, Mr. Steffey?

A. He let me have the \$900.00 on my personal check; that is one reason I know.

(Testimony of Harvey J. Steffey.)

Q. Was there any action of his that indicated that he knew?

Mr. TANNAHILL.—We object to the question upon the ground that it calls for a conclusion of the witness and not a statement of fact, and incompetent, irrelevant and immaterial.

A. The fact that he told me he would make arrangements to have the money left at the Idaho Trust Company led me to believe that he knew what I was doing, and I also told him about the claims and who they were, and when final proof was to be made.

Q. How long was this before final proof?

A. I think it was about two weeks, if I am not mistaken.

Q. I show you a check, dated March 23, 1906, drawn on the Lewiston National Bank, payable to the order of self, for \$356.00, signed H. J. Steffey. Did you sign that check? A. Yes, sir.

Q. Did you receive the money on it? [1609—1279] A. I did.

Q. And do you know what that money was drawn for? A. No, I couldn't say positively.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 69A.

Mr. GORDON.—Q. I show you a check, dated March 23, 1906, signed H. J. Steffey, payable to the order of the Lewiston National Bank, drawn on the Lewiston National Bank, for \$508.47. Did you sign that check? A. Yes, sir.

Q. Do you know what that check was drawn for?

(Testimony of Harvey J. Steffey.)

A. I can't remember positively, no.

Q. Have you any recollection of what it was for?

A. I think I have; yes.

Q. What is your best recollection?

A. That it was a balance that we straightened up; after these entrymen would convey their claims to Kester and Kettenbach there would be an account against me there for the checks that I drew to pay them, and I think this was a kind of a balance to square it up, I think.

Q. Wasn't that, however, before the deeds were made, Mr. Steffey? The deeds weren't made for several months after that. That is in 1906. The deeds were made after March, 1906. The Myers claim was deeded March 21, 1906.

A. Well, this had something to do with the Myers claim. There was a note that Mr. Myers gave the Lewiston National Bank for something over \$800.00, and this was something in connection with that, I am quite satisfied.

Q. Was the \$800.00 note of Myers in connection with the entry at all? A. Yes, sir.

Q. Did he give you a note for \$800.00 for his and his wife's claim? [1610—1280]

A. No; just for his own claim, the claim he filed on.

Q. I mean, was that in payment for the money you had advanced his wife and him?

A. Not his wife; just himself.

Q. Did you let him have \$800.00 on his claim?

A. Well, this \$800.00 was in connection with the relinquishment that Mr. Dwyer got from the Government, which amounted to something like \$300.00

(Testimony of Harvey J. Steffey.)

or \$400.00, and what Mr. Myers was to get out of it, and what I was to get out of it was added to that, amounting to something like \$800.00; I have forgotten the exact amount.

Mr. GORDON.—I offer that check, dated March 23, 1906, for \$508.47, in evidence.

Said check was thereupon marked by the stenographer as Ex. 79.

Mr. GORDON.—Q. I show you a check, dated June 12, 1906, payable to myself, in the sum of \$900.00, drawn on the Lewiston National Bank, signed H. J. Steffey. Did you sign that check?

A. Yes, sir.

Q. Do you know what that was for?

A. Well, that was for the money to give these entrymen so that they could pay the Government fee on the land.

Q. Do you know which entrymen it referred to?

A. No, I couldn't say without looking it up.

Q. It was one of the entrymen?

A. One of the entrymen, yes.

Q. That you have been testifying to?

A. Yes, sir.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 70A.

Mr. GORDON.—Q. I show you a check, dated June 19th, 1906, payable to myself [1611—1281] drawn on the Lewiston National Bank, in the sum of \$900.00, signed H. J. Steffey. Did you sign that check? A. Yes, sir.

Q. Was that for the same purpose that the other

(Testimony of Harvey J. Steffey.)

one was that you identified? A. Yes, sir.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 70B.

Mr. GORDON.—I show you a check, dated January 7, 1907, to Harvey J. Steffey, on the Lewiston National Bank, in the sum of \$50.00, signed H. J. Steffey. Do you know what that \$50.00 was for, and did you sign that check?

A. I signed the check, but I don't remember what use I made of the money.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 70C.

Mr. GORDON.—Now, look through these other checks, and see if you know what any of them were given for. If you don't, I won't offer them in evidence.

A. There is only one—

Q. What is the date of it?

A. Dated April 3d, 1907.

Q. What is the sum?

A. Four hundred and fifty dollars. That was given to some entryman.

Q. For final proof?

A. For the final proof money.

Q. You signed that check? A. Yes, sir.

Mr. GORDON.—We offer it in evidence.

Said check was thereupon marked by the stenographer as Ex. 71. [1612—1282]

Mr. TANNAHILL.—We object to the checks in so far as they relate to bills No. 388 and 406, upon the

(Testimony of Harvey J. Steffey.)

ground that they are irrelevant and immaterial, the entries not being involved in these two particular actions.

Mr. GORDON.—Q. Mr. Steffey, at the time you had your first talk with Mr. Dwyer did you know that the Government agents were investigating the land transactions of Kester, Kettenbach, and Dwyer?

A. No, I did not.

Q. You didn't? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Steffey, where did you say you lived prior to the time you removed to Idaho?

A. When I moved to Idaho?

Q. Yes. Where did you live before you moved to Idaho? A. California.

Q. How long had you lived in California?

A. Well, with the exception of when I was away from there, all my life.

Q. What town was you born in, in California?

A. I wasn't born in California.

Q. Where was you born?

A. In Adamstown, Pennsylvania.

Q. How long did you live there?

A. Well, I couldn't say.

Q. In what year was you born?

A. In 1858.

Q. Where did you go from Adamstown?

A. Well, I don't know. [1613—1283]

Q. How long did you live at Adamstown?

A. I don't know.

(Testimony of Harvey J. Steffey.)

Q. Haven't you any idea how long you lived there?

A. I have not.

Q. Did you leave there before you was grown?

A. I think I did, yes.

Q. How long before you reached the age of twenty-one years was it that you left there?

A. I couldn't say.

Q. Under what circumstances did you leave there?

A. I suppose I left there with my parents.

Q. Where did your parents move to?

A. They moved to Corry.

Q. What particular town?

A. Corry, Pennsylvania.

Q. The same State? A. Yes, sir.

Q. How long did they live there?

A. Well, I couldn't say.

Q. Do you know in what year they moved to that town? A. No, I do not.

Q. Where did they move to next?

A. Well, I don't think they moved anywhere next; my mother stayed there.

Q. She stayed there? A. Yes, sir.

Q. Was you with them all this time? Did you go with them when they moved?

A. I think I did.

Q. You think you did. Don't you know you did?

A. Well, no, not exactly. [1614—1284]

Q. Now, what particular reason have you for not knowing whether you did or not?

A. Well, some of our children were left with some of my mother's folks and some with my father's folks.

(Testimony of Harvey J. Steffey.)

Q. And you don't know what was done with you, is that right? A. Part of the time, no.

Q. What part of the time is it that you don't know anything about?

A. Well, from the time I was born up until the time that we moved to Corry.

Q. About how many years was that?

A. I couldn't say.

Q. Haven't you any idea? A. No, I haven't.

Q. Give us your best impression about it.

A. Well, probably eight or nine years.

Q. About eight or nine years? A. Yes.

Q. Then, where did you go next?

A. From where?

Q. From your last place of residence. I don't remember the last town you say your folks moved to.

A. Corry?

Q. Yes. A. California.

Q. What year did you go to California?

A. I think it was in '68 or '69, somewhere along there.

Q. Where did you live in California?

A. Well, I lived in several places in California.

Q. Well, when you first went to California where did you go to? A. I went to Santa Clara.

Q. How long did you live there? [1615—1285]

A. I think perhaps about a year.

Q. In what business was you engaged there?

A. I wasn't in any business; I was just simply living there.

Q. When did you leave there?

(Testimony of Harvey J. Steffey.)

A. Well, I couldn't say exactly.

Q. Have you any idea when you left there?

A. Not the date, no.

Q. About when was it?

A. It was along in the early '70's.

Q. Where did you go to? A. San Jose.

Q. What did you do there?

A. I went to school there.

Q. How long was you in school there?

A. Probably about a year.

Q. Then, where did you go? A. Oakland.

Q. How long did you stay there?

A. Oh, about a year perhaps.

Q. What was your address in Oakland?

A. I lived with a family by the name of Degolia there, on Webster street.

Q. Do you remember the number?

A. No, I do not.

Q. How long did you live there?

A. I think I lived with that particular family about a year.

Q. About a year? A. Yes, sir.

Q. In what business was you engaged?

A. Going to school.

Q. Where did you go after you left there?

A. I think I went to Utah. [1616—1286]

Q. What part of Utah?

A. Along the line of the Central Pacific Railroad.

Q. What town? A. No particular town.

Q. What sized town was it at that time?

A. There was no particular town that I went to.

(Testimony of Harvey J. Steffey.)

Q. That was your postoffice, was it? A. No.

Q. What was your postoffice?

A. I had no postoffice.

Q. You had no postoffice? A. No.

Q. Where did you get your mail?

A. From the party that I was with.

Q. The party you was with? A. Yes, sir.

Q. Who was you with? A. A surveying party.

Q. What was you doing?

A. I was with them, helping them in several ways.

Q. What surveying party was it?

A. It was a surveying party that was doing surveying for the Central Pacific Railroad.

Q. How long was you engaged in that business?

A. All one season, until late in the winter.

Q. Where did you go then?

A. I went back to California.

Q. What part of California?

A. I don't remember exactly where.

Q. Haven't you any idea where you went then?

A. No, I haven't. I went to where my father was.

Q. How long did you stay there? [1617—1287]

A. Well, I couldn't say; I was with him from then on until—

Q. Now, when was it that you went back to where your father was? A. I couldn't give you the date.

Q. About when was it?

A. In the early '70's some time.

Q. In the early '70's? A. Yes, sir.

Q. Now, then, what did you do from that time on to the next time you can remember?

(Testimony of Harvey J. Steffey.)

A. I was with him; I don't remember of doing much of anything only being with him.

Q. How long was you with him?

A. I was with him five or six years.

Q. Five or six years? A. Yes, sir.

Q. Then, where did you go?

A. I think I went to work firing on the Central Pacific Railroad.

Q. How long did you work at that work?

A. About eighteen months.

Q. About eighteen months? A. Yes, sir.

Q. What was your run?

A. From Terrace, Utah, to Ogden.

Q. Then, what did you do?

A. I was working on the Utah & Great Northern for a while.

Q. What did you do there? A. Braking.

Q. How long did you work at that work?

A. Perhaps a little over a year.

Q. Then, what did you do?

A. I came to Helena, Montana.

Q. What year was it that you came to Helena?

[1618—1288]

A. I think it was in the summer of '82.

Q. In the summer of '82? A. Yes, sir.

Q. What did you do there?

A. I worked in the yards.

Q. What yards? A. Northern Pacific.

Q. Northern Pacific? A. Yes, sir.

Q. How long did you work there?

A. Probably four or five months.

(Testimony of Harvey J. Steffey.)

Q. Then, what did you do?

A. I went to Idaho.

Q. What part of Idaho?

A. Pend d'Oreille Lake.

Q. What did you do there?

A. Almost anything I could get to do.

Q. How long did you remain there?

A. Ever since, with the exception of the time I have been down here.

Q. I see. You wasn't away any place else?

Q. Only for short periods.

Q. For short periods. Can you tell us anything about any particular work you did?

A. Yes, sir.

Q. What did you do?

A. Prospecting, trapping, mining.

Q. Anything else? A. Nothing.

Q. And you remained there until you came down here? A. Yes, sir.

Q. Are you a married or single man? [1619—1289] A. Single.

Q. You never have been married? A. No, sir.

Q. Mr. Steffey, when did you say you came to Idaho?

A. It was in the latter part of '82, I think.

Q. The latter part of '82. When did you come down to this country?

A. That is, to the northern part of Idaho. I was in the southern part of Idaho in '80, I think.

Q. In '80? A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. When did you come down to Nez Perce County? A. The spring or summer of 1902.

Q. The spring or summer of 1903, you say?

A. '02.

Q. What did you do down here?

A. Well, I was,—originally I came prospecting, and then I got interested in the timber business.

Q. Yes. What part of this section of the country was you working in? A. North of Pierce.

Q. How long did you work there?

A. Well, practically ever since I came there.

Q. Ever since you came there? A. Yes, sir.

Q. And when did you say you got acquainted with Mr. Dwyer?

A. I think it was some time in 1904.

Q. Some time in 1904? A. Yes, sir.

Q. And under what circumstances did you get acquainted with him?

A. He was arrested by the United States marshal.
[1620—1290]

Q. And that was about the time these timber land matters came up?

A. Well, I don't think,—I hadn't heard of any timber land matters previous to that.

Q. Where was that? A. In Lewiston.

Q. Arrested by the United States marshal?

A. Yes, sir.

Q. When was it?

A. I think it was some time in 1904; I couldn't say,—some time in January or February or March.

Q. Do you know about what time it was?

(Testimony of Harvey J. Steffey.)

A. About what time?

Q. Yes; what time of the month it was.

A. No, I do not.

Q. Do you know what he was charged with?

A. Yes, sir.

Q. What was it?

A. For perjury, I think.

Q. For perjury. You say that wasn't in connection with the land matters?

A. Well, I said I hadn't heard of any land matters at that time.

Q. Well, it was when these charges were first,—when the indictments were returned by the grand jury, was it not? Wasn't it subornation of—

A. I don't recollect of any—

Q. Wasn't it subornation of perjury?

A. No, I think not.

Q. And you don't know of any other charge that he was arrested on except these land matters, do you?

A. Well, that wasn't in connection with these land matters.

Q. That wasn't? It was in connection with land matters, wasn't it? [1621—1291]

A. It was in connection with land, yes.

Q. When did you first begin to work for Mr. Dwyer?

A. It was some time in the fall of 1904, I think.

Q. In the fall of 1904? A. Yes, sir.

Q. And what was you doing?

A. I was running compass for him.

(Testimony of Harvey J. Steffey.)

Q. And where was you doing that work?

A. A little north and east of Pierce.

Q. Now, did you do any other work for him at that time? A. No, not at that time.

Q. Now, you say, Mr. Steffey, that you and Mr. Dwyer had a conversation in regard to locating some people on these timber claims that you have referred to as the Myers and Jolly claims? A. Yes, sir.

Q. Now, where did you have your first conversation in regard to these locations?

A. Well, I don't recollect where it was.

Q. Well, now, you had gone and cruised out the claims, had you? A. Yes, sir, I had.

Q. You was in the locating business?

A. Yes, sir.

Q. And you had been in the locating business for some time?

A. Not in particular, no; I had located a few people before that.

Q. And you had helped them to get the money to make final proof, had you not?

A. None before those that I spoke to Mr. Dwyer about.

Q. None before those? A. No.

Q. You did some after that, did you?

A. Yes, sir. [1622—1292]

Q. Quite a number of them?

A. Only in connection with Mr. Dwyer.

Q. Well, now, who else did you locate?

A. I located Mr. Rowland.

Q. What became of his claim?

(Testimony of Harvey J. Steffey.)

A. I couldn't say.

Q. Who else did you locate?

A. A brother in law of his; I have forgotten his name; I think it was Martin, though.

Q. Did you help him get the money?

A. I did not.

Q. Did you locate Mr. and Mrs. Gaffney?

A. I did.

Q. And Mr. and Mrs. Bowman? A. Bowman?

Q. Yes.

A. I think not; I don't recognize the name.

Q. Did you locate anyone else?

A. I located Miss Rundell.

Q. Who else? Did you locate Mr. and Mrs. Burrows? A. Burrows?

Q. Yes.

A. I did, but they didn't prove up on their claims.

Q. Why didn't they prove up?

A. They couldn't get the money.

Q. You tried to get the money for them, did you?

A. Yes, sir; through Mr. Dwyer and Mr. Kester.

Q. And you didn't get it? A. No.

Q. And you located the two Lane claims?

A. Yes, sir.

Q. Those are the ones you testified about, are they?

[1623—1293] A. Yes, sir.

Q. What became of those claims?

A. I think Mr. Dwyer bought them.

Q. And you located Charles Irwin?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. And did you help him get the money?

A. I did.

Q. What became of his claim? A. I got it.

Q. And had it deeded to yourself, did you?

A. Yes, sir.

Q. Did you locate Mrs. Wiggin? A. I did.

Q. Did you help her get the money?

A. I did not.

Q. Did you locate Miss Rundell?

A. I located Miss Rundell.

Q. Did you help her get the money?

A. I did not.

Q. Did you locate Doctor Keener?

A. Keener?

Q. Yes. A. I don't remember it.

Q. Did you locate a fellow by the name of Keenan?

A. Keenan?

Q. Yes. A. No.

Q. You don't know anything about his claim?

A. I do not.

Q. You didn't buy his claim? A. Keenan?

Q. Yes. [1624—1294] A. No.

Q. Now, what was the conversation you had with Dwyer regarding these Myers and Bonney and Jolly claims that you speak of, the first conversation you had regarding it?

A. I told him about these lands that I had cruised out, and he told me to get somebody and locate on them and tell them we would give them \$200.00 after they proved up on them.

(Testimony of Harvey J. Steffey.)

Q. And that is all that was said?

A. Well, yes, in particular about that.

Q. Now, when was that?

A. I couldn't say when it was, the exact date.

Q. Then, what did you do?

A. I went up and located them.

Q. Dwyer told you that he would give them \$200.00 over and above expenses?

A. Yes, sir.

Q. Had Dwyer gone and looked at the claims?

A. Some of them he did.

Q. What claims did he go to look at?

A. He went to look at Mrs. Loney's and Mrs. Jolly's claims.

Q. Did he know that Mrs. Loney and Mrs. Jolly were going to take those claims?

A. I think they had already taken them when he looked at them.

Q. Hadn't they already filed on them?

A. Yes, sir.

Q. Hadn't they made their final proof too?

A. I don't think they had.

Q. To refresh your recollection, wasn't it after they made final proof and just before they made the deeds that Mr. Dwyer went up and looked at them?

A. Possibly, but I don't recollect it. [1625—1295]

Q. That may have been the case?

A. It may have been.

Q. Didn't he tell you that the Jolly claims were poor claims and he didn't want to buy them?

(Testimony of Harvey J. Steffey.)

A. Well, I had already told him that before we located them on it.

Q. After he and you went up and looked over those claims he told you they were poor claims and he didn't want to buy them?

A. No, he didn't say anything about not wanting to buy them.

Q. Didn't you go down and see Kester about it, and explain to Kester that some of them were poor claims and others were good ones, and he had better take them?

A. No, I never told Mr. Kester that.

Q. Didn't you tell Dwyer that?

A. No, I don't think I did.

Q. You never told him that some of them were not very good, but that others were good, and they would average up all right?

A. Possibly I may have told him that; very likely I did.

Q. And in that way he concluded to take the claims?

A. I don't know what he concluded to do.

Q. But he did finally take them?

A. He took them.

Q. What did he pay you for them?

A. He didn't pay me anything for them.

Q. What did he pay for the claims?

A. He paid these people \$200.00; they all got the \$200.00.

Q. You had already paid that, according to your testimony.

(Testimony of Harvey J. Steffey.)

A. No, I hadn't already paid that.

Q. Well, it was charged up to your account, wasn't it? A. Well, I don't know whether it was or not.

Q. You had given your checks for it?

A. Well, I had given my checks, yes.

Q. And they were paid, the checks were paid, and they were returned [1626—1296] to you, charging the same as any other checks you drew on the bank, were they not?

A. Yes, sir.

Q. Then, they must have been charged up to your account, were they not?

A. Well, this money wasn't paid finally until the lands were deeded over to Kester and Kettenbach.

Q. Well, you drew the money out, didn't you?

A. I did.

Q. On your checks? A. Yes, sir.

Q. And passed it over to these entrymen, is that right? A. The entrymen got their \$200.00.

Q. Well, now, then, how did you get your money back? How was your settlement made?

A. I didn't get any money back.

Q. How was your settlement made?

A. The settlement was made when the—I don't know how they did make the settlement. I never paid any attention to my checks afterwards; I suppose they straightened those things up themselves.

Q. Well, you got your checks back, didn't you?

A. Yes.

Q. When did you first begin to pay some attention to your checks?

(Testimony of Harvey J. Steffey.)

A. Well, I always paid attention to my checks.

Q. You always paid attention to your bank account? A. Usually, yes.

Q. And you was depositing money and checking it out? A. When I had money.

Q. And you frequently overdrew on the bank, did you not? A. Yes, sir.

Q. And frequently borrowed money from the bank? A. Occasionally, yes. [1627—1297]

Q. Now, then, the account was checked on for this money just the same as any other check you drew on the bank, was it not? A. Yes, sir.

Q. Didn't you pay some attention to your bank account, how it stood and how this settlement was made?

A. Every once in a while I would get a statement, yes.

Q. Then, you paid some attention to it, did you not, when you got the statement? A. Oh, yes.

Q. Now, this Jannie Myers claim, the consideration in the deed was \$450.00. That is just about what the claim brought, is it not?

A. No; the consideration, I think, was more than \$450.00; that is what he paid the Government for it.

Q. That wasn't a full hundred and sixty acres, was it? A. The Charles Myers claim was.

Q. The Jannie Myers claim was eighty acres?

A. That was eighty acres, yes.

Q. You didn't pay \$450.00 for eighty acres, did you?

A. That was the agreement. Mr. Dwyer said he

(Testimony of Harvey J. Steffey.)

would pay \$450.00 for the claim.

Q. Four hundred and fifty dollars for the claim?

A. Yes.

Q. That was more than the claim cost, more than you have testified that it cost. What went with the balance?

A. Well, I don't know as I testified that the claim—

Q. Well, now, wasn't your account credited with \$450.00 for that eighty acres of land?

A. No, I never saw anywhere on my account where I was credited with \$450.00 for that eighty acres.

Q. Wasn't it credited \$850.00 for the Jolly claim?

A. There is nowhere in my accounts that there is any notice of that kind. [1628—1298]

Q. How is that?

A. There is nowhere in any of my accounts that there is any notice of that kind.

Q. Well, \$850.00 was more than it cost, more than the cost of the claim, including the \$200.00 paid to the entryman, was it not? A. Yes, sir.

Q. Now, you stated that Jannie Myers was to have \$200.00. A. No, I did not.

Q. What was she to have?

A. I think she was to have,—well, I think that was left to me, that claim. Mr. Dwyer said he would give \$450.00 to anybody I would locate on it, and if I remember right I gave Mrs. Myers \$135.00 or \$145.00.

Q. Then, you had this agreement regarding the Jannie Myers claim, you had a different agreement regarding the Jannie Myers claim from what you did

(Testimony of Harvey J. Steffey.)

regarding the others, is that correct?

A. No. Well, yes, it was different; that is true.

Q. Well, then, did you have any different agreement as to the Jolly claim?

A. From Mrs. Myers' claim?

Q. Yes. A. Yes.

Q. What was the difference?

A. The difference was that these entrymen was to get a straight \$200.00, that I was to guarantee that they would make \$200.00 out of their claims, and there was no other consideration in those mentioned whatever.

Q. Now, Mr. Steffey, wasn't the conversation you had with Mr. Jolly that you would insure him that you would sell the claim for him after he made final proof for enough so that he would get at least \$150.00 or \$200.00, over and above his expenses? [1629—1299]

A. No, sir.

Q. You never had any such conversation as that with him? A. No, sir.

Q. Now, didn't you tell Clinton E. Perkins that you would sell his claim for him so that he could make at least \$200.00 over and above his expenses?

A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. Then Mr. Perkins' evidence wherein he stated that he had an understanding with you that you would sell the claim for him after he proved up for at least \$200.00 over and above all the claim cost him is not true, is it?

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—I object to that as argumentative.

A. I don't know; I never heard any of his evidence.

Mr. TANNAHILL.—Q. Then, if he did testify to that, it isn't true? A. It isn't true.

Mr. GORDON.—I object to that as argument.

Mr. TANNAHILL.—Q. Mr. Steffey, you say you had Mr. Perkins sign a deed? A. Yes, sir.

Q. And you told Mr. Perkins that you couldn't make any agreement to buy the claim or sell the claim for him at that time, didn't you?

A. Well, I don't recollect now exactly what I did tell Mr. Perkins. Mr. Perkins understood that he was to get \$200.00 clear of all expenses for the claim.

Q. Well, now, Mr. Steffey, I am not asking you for your conclusion, or what Mr. Perkins understood.

A. Very well.

Q. I am asking you what was said. Didn't you tell Perkins that you couldn't make any agreement to buy the claim at that time, or to sell [1630—1300] it for him at that time?

A. I don't think I did.

Q. Will you swear that you didn't?

A. To the best of my knowledge, I would, yes.

Q. You know whether you did or not, don't you?

A. Well, not exactly.

Q. Did you have any such conversation as that with him at all? A. I don't think I did.

Q. You never told him you couldn't make an agreement with him?

A. Well, yes, I may have told him I couldn't make an agreement, but there was no such language used

(Testimony of Harvey J. Steffey.)

as "sell the claim."

Q. But you did tell him you couldn't make an agreement with him? A. I think I did.

Q. You tried to make him understand that?

A. Yes, sir.

Q. That you couldn't have an agreement with him?

A. Yes, sir.

Q. And you so understood, didn't you?

A. Well, no, I didn't understand that.

Q. Do you mean to say that you was trying to lead Mr. Perkins into committing perjury and not knowing it?

A. Well, no, I didn't want him to commit perjury.

Q. You didn't want him to commit perjury?

A. No.

Q. Then, the arrangements you made with Mr. Perkins was such that you made him understand that it didn't amount to an agreement, is that right?

A. Well, he understood it as well as I did. I don't know what I made him understand, but he understood it as well as I did.

Q. He understood that he didn't have any agreement, just as well as you did, didn't he? [1631—1301]

A. Well, I don't know what he understood.

Q. But you remember that you did tell him you didn't have an agreement, is that right? A. Yes.

Q. And you also had him sign an affidavit, Defendants' Exhibit "D," for identification, as follows:

[Defendants' Exhibit "D."]

“State of Idaho,
County of Nez Perce,—ss.

Clinton E. Perkins, being duly sworn, deposes and says: That he is the identical party who made entry of the lands hereinafter described under the Stone and Timber Act providing for such entry. That at no time prior to the entry or prior to the final proof did the affiant have any agreement or understanding express or implied, that said entry was being made or said title being acquired for the benefit or advantage, directly or indirectly, of any person, company, or corporation. That said entry was made, and said title acquired, solely for the exclusive use and benefit of the affiant. That prior to the entry affiant had made personal examination of said land and here makes oath that to the best of his belief the same did not and does not contain any valuable deposit of gold, silver, cinnabar, copper or coal and was not mineral land under the terms of said act. That the sale now being negotiated is not the result nor made in pursuance of any agreement or understanding, express or implied, had at any time prior to final proof upon the hereinbelow described lands, and that the said purchaser in no wise nor in any way had any interest in or to said lands, or the title thereto, directly or indirectly, prior to the negotiations for the present sale and that such negotiations were commenced subsequent to the final proof and the acquisition of title by this affiant from the Government.

(Testimony of Harvey J. Steffey.)

That the lands referred to are described as follows, to-wit: Lots number three and four, Section three, Township 36 North, Range 5 East, Boise Meridian; the south half of the Southwest quarter of Section 34, Township 37 North, Range 5 East, Boise Meridian. [1632—1302]

CLINTON E. PERKINS.

Subscribed and sworn to before me this 28th day of February, A. D. 1907.

[Notarial Seal]

WILLIAM J. TODD,

Notary Public, in and for Nez Perce County, Idaho."

You had him sign that affidavit, did you?

A. I think so.

Q. Is that affidavit true?

A. As far as it went, I guess it is, if he signed it.

Q. You say the affidavit is true, do you?

A. That he signed it, yes.

Q. Yes, sir, he signed the affidavit and swore to it. You can examine it if you like (handing paper to witness). Now, Mr. Steffey, who did you first talk to regarding the circumstances of your acquiring this land? What official of the Government did you talk to first? A. Acquiring which land?

Q. This Perkins land. A. I didn't acquire it.

Q. Well, you had something to do with it, about locating him on it, and the way it was acquired by Kester and Kettenbach and Dwyer?

A. I don't know as I ever spoke to any Government official about acquiring it.

Q. How did you first get in touch with the Government officials regarding it?

(Testimony of Harvey J. Steffey.)

A. You mean in regard to this investigation?

Q. Yes.

A. Why, if I remember right, I received a note at the Bollinger Hotel signed by Mr. Smith and Mr. Watt, asking me to call on them; I think that was the first.

Q. And when was that? [1633—1303]

A. Well, I don't know.

Q. You had had some trouble with Mr. Dwyer shortly before that, hadn't you, and Mr. Kester and Mr. Kettenbach?

A. I never had any trouble with Mr. Kettenbach and Mr. Kester.

Q. You had some trouble with Mr. Dwyer, did you not? A. No personal trouble.

Q. You and he had a disagreement, did you not?

A. Well, yes, I think we did, about this land matter.

Q. About the land matter? A. Yes.

Q. Which land did that refer to?

A. That referred to these claims that I located these people on.

Q. Didn't you have some trouble over a claim you had bought for them that you had cruised and given them an estimate of a large amount of timber, and when they investigated it, the timber wasn't on the land? Didn't you have some trouble about that?

A. I think not.

Q. Are you sure you didn't? A. Yes, sir.

Q. Don't you remember that you reported on the Keener claim four million feet of timber, and after

(Testimony of Harvey J. Steffey.)

it was cruised there was only about a hundred and thirty thousand feet, and they had bought it on your estimates and recommendation and given \$1,200.00 for it? A. No, sir, I don't remember.

Q. You don't remember anything of the kind?

A. No, sir.

Q. Didn't Mr. Dwyer tell you about that time that someone would have to make that loss good or have to stand that loss? A. No.

Q. Nothing of that kind?

A. No, sir. [1634—1304]

Q. But you and Mr. Dwyer did have some trouble before you reported to the Government officials regarding this condition, didn't you?

A. None in particular, only he attempted to sell my part in a barn.

Q. Was that all the trouble you had?

A. Not in particular, only the foul language that he would use occasionally.

Q. Is that all the trouble you had?

A. That is all.

Q. Didn't you testify that you and he had some trouble over these particular claims in question now?

A. No, sir.

Q. You had no trouble over them at all?

A. None whatever.

Q. You had no disagreement over them?

A. Not in particular; no.

Q. You had no trouble with Kester and Kettenbach regarding it? A. None whatever.

Q. Didn't you have a conversation with Clinton

(Testimony of Harvey J. Steffey.)

E. Perkins wherein you told him that if he would come down and testify for the Government he had a good chance to get that land back? A. No, sir.

Q. Didn't you tell him that Dwyer and Kester and Kettenbach had given you dirt and you was going to even up with them? A. No, sir.

Q. You never had any such conversation as that?

A. No, sir.

Q. Didn't you tell Mr. Perkins, some time during the summer of 1907 or the spring of 1908, when you went up to see Mr. Perkins about his appearing and testifying for the Government in these particular cases, that these fellows, meaning Dwyer, Kester and Kettenbach, or some of them, had done you dirt and you was going to even up with them, or words in substance and to that effect? [1635—1305]

A. I did not.

Q. Did you ever have any such conversation as that? A. I did not.

Q. Did you have any such conversation as that with Frank J. Bonney? A. No, sir.

Q. Did you talk to either of these men about appearing as a witness for the Government?

A. I did.

Q. At whose request did you go to see them?

A. At nobody's request.

Q. Of your own volition, did you? A. Yes, sir.

Q. Who did you talk to?

A. I talked to Mr. Loney and Mr. Jolly and Mr. Perkins and Mr. Bonney and all those people I went and located I went to see.

(Testimony of Harvey J. Steffey.)

Q. What did you tell Mr. Perkins?

A. I told him in case he was called in this investigation to tell them the exact truth in everything that occurred, and not in any way to try to shield me.

Q. You didn't care for yourself?

A. I wanted them to tell the exact truth, so as not to bring themselves into any trouble.

Q. Why did you think they might bring themselves into any trouble?

A. Well, we were very friendly, good friends, and I didn't want to cause them any trouble or expense that would occur through me.

Q. You didn't want to cause them any trouble?

A. No, sir.

Q. And at the same time you are testifying to a different state of facts to what they are testifying to, and you went over to the grand jury at Moscow and testified to a different state of facts?

A. I didn't know what they testified to. [1636—1306]

Q. Didn't Mr. Bonney tell you, right there, sitting in Mr. Gordon's room, that he had no prior agreement, and that you told him he had no prior agreement?

A. I don't remember of Mr. Bonney being in the room when I was present.

Q. Will you say he wasn't?

A. I think I will; yes.

Q. Will you swear that Bonney never told you that? A. Yes, sir.

Q. Will you swear that Bonney never told you

(Testimony of Harvey J. Steffey.)

that you told him at the time that you talked to him about locating him that you had no agreement with him, and that you couldn't make an agreement with him?

A. If you will just make that statement again, I perhaps may understand it.

The last question was thereupon read by the stenographer.

A. I possibly may have told him that.

Q. To refresh your memory, Mr. Steffey, when you was over at Moscow, you was there attending a session of the grand jury, and Mr. Bonney was subpoenaed there as a witness, in Mr. Gordon's room, and I will ask you if he didn't tell you that he could have gone and sold that land to anyone else that he wanted to and paid you back the money he borrowed from you and you would have had no complaint, and you said, "Yes, I think you could, Mr. Bonney, but I would have been pretty mad about it, but now I wish to God you had?"

A. No, sir, I never said that at all.

Q. But he might have told you at the same time that you told him you had no agreement?

A. I possibly told him that before I located him on the claim.

Q. And you left him with that understanding?

A. I tried to, yes, sir.

Q. But you testified before the grand jury that you did have an agreement with him, is that right?

[1637—1307]

A. Well, I testified to the exact manner that I

(Testimony of Harvey J. Steffey.)

made arrangements with these entrymen.

Q. You didn't hear the evidence of Charlie Myers, did you? A. In what case?

Q. This case here, when he testified the other day?

A. No, sir.

Q. You told him that you couldn't make an agreement with him?

A. I think I told all those entrymen that.

Q. You appeared as a witness for Charlie Myers on his final proof, didn't you?

A. Yes, sir. I think I did, yes.

Q. And when you was asked this question: "Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No." Do you remember that?

A. Yes, sir.

Q. Was that answer true or false?

A. I don't think it was quite true.

Q. You knew it was false at the time, did you?

A. Oh, yes.

Q. You knew you was committing perjury when you testified to it, did you? A. Yes, sir.

Q. Then: "Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?" To which you answered, "No." You remember of answering

(Testimony of Harvey J. Steffey.)

that, do you? A. I think I did.

Q. Was that answer true or false?

A. It wasn't quite true, no. [1638—1308]

Q. Well, was it true or false? A. It was false.

Q. And you knew it was false at the time, did you?

A. I did.

Q. And that is your signature attached to this final proof of Charles S. Myers, is it?

A. Yes, sir.

Q. You was also a witness on the final proof of Clinton E. Perkins, was you not?

A. I think I was.

Q. I call your attention now to Plaintiff's Exhibit 20, and ask you if that is your signature attached to the final proof testimony of witness Harvey J. Steffey? A. That is my signature.

Q. You signed that, did you?

A. That is my signature, yes.

Q. Did you testify as follows: "Do you know whether the applicant has directly or indirectly made any agreement or contract, or in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No." Do you remember that?

A. I think so.

Q. Was that answer true or false?

A. It wasn't true.

Q. You knew it was not true at the time, did you?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. And you also answered: "Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?" To which you answered, "No." Do you remember that answer?

A. I think so. [1639—1309]

Q. Was that answer true or false? A. False.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. You was also a witness to the final proof of Jannie Myers, was you not? A. I was.

Q. And you signed the testimony of witness Harvey J. Steffey, Plaintiff's Exhibit 11, did you? That is your signature, is it?

A. That is my signature, yes.

Q. Do you remember of testifying as follows: "Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No." You so answered, did you? A. Yes, sir.

Q. Was that answer true or false?

A. It was false.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. "Question 11. Are you in any way interested in this application, or in the lands above described,

(Testimony of Harvey J. Steffey.)

or the timber or stone, salines, mines, or improvements of any description whatever thereon?" To which you answered, "No." Did you so testify?

A. Yes, sir.

Q. Was that statement true or false? A. False.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. Now, you also had Jannie Myers, this lady that you located, sign [1640—1310] an affidavit, too, did you not? A. Yes, sir.

Q. Showing you now Defendants' Ex. "B," for identification; this affidavit is as follows:

Mr. GORDON.—Why not offer it in evidence instead of reading it?

Mr. TANNAHILL.—All right. The defendants offer in evidence Defendants' Exhibit "B," for identification. The defendants also offer Defendants' Exhibit "D," for identification, which has already been read into the record.

Q. You had Mary A. Loney sign an affidavit also, did you not, Mr. Steffey? (Handing witness paper.) A. Yes, sir.

Mr. TANNAHILL.—The defendants also offer in evidence the affidavit of Mary A. Loney, and ask that it be marked as defendants' proper exhibit.

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. "Y."

Mr. TANNAHILL.—Q. You had James T. Golly sign an affidavit too, did you not, on December 22, 1906? A. Yes, sir.

Mr. TANNAHILL.—The defendants offer in evi-

(Testimony of Harvey J. Steffey.)

dence the affidavit of James T. Jolly, just identified by the witness, and ask that it be marked as a defendants' exhibit.

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. "Z."

Mr. TANNAHILL.—The defendants offer in evidence Defendants' Ex. "C," for identification, the affidavit first identified.

Q. I will ask you if you had Effie A. Jolly sign an affidavit? A. I did.

Q. That is the affidavit you had her sign, is it (showing witness paper)? [1641—1311]

A. I had her sign an affidavit; I think that is it.

Mr. TANNAHILL.—The defendants offer in evidence the affidavit of Effie A. Jolly, just identified by the witness.

Q. Now, as I understand, Mr. Steffey, you don't wish to be understood as swearing that you wilfully induced these people who signed these affidavits to commit perjury, but had them sign an affidavit setting forth their understanding of the transaction as it was, the way they understood it?

A. That what?

Q. As I understand you, you do not wish to be understood as swearing that you wilfully induced these people who signed these affidavits to commit perjury, but that you had them sign an affidavit setting forth the facts as they understood them?

A. These affidavits were signed subsequent to the time that they made their transfer of the property, most of them.

(Testimony of Harvey J. Steffey.)

Q. Some of them were not, some of them were signed at the time.

A. Some of them were signed at the time.

Q. But, as I understand you, you do not wish to be understood as swearing that you wilfully suborned them to commit perjury, but that you had them sign these affidavits setting forth the conditions as they understood them?

A. Mr. Dwyer had me have them sign these affidavits.

Q. Well, that is all right; that is what you stated, that you had them sign these affidavits which set forth the transactions as they understood them?

A. Well, I don't know whether they did or not.

Q. You don't wish to be understood as swearing that you wilfully went and had these women commit perjury? A. No.

Q. Then, you had them sign the affidavits setting forth the transaction as they understood it, taking into consideration your statement to them that you couldn't make a contract with them, and leaving them [1642—1312] with that understanding?

A. Well, I don't know whether that is the way they understood it or not.

Q. Well, they have sworn to it, haven't they, and especially when they have testified to it on the stand?

Mr. GORDON.—I object to argument as to what they testified to.

Mr. TANNAHILL.—Q. In case these witnesses have sworn to these affidavits and reaffirmed them upon the stand, and testified that the statements con-

(Testimony of Harvey J. Steffey.)

tained in those affidavits were true as they understood it, then you do not wish to be understood as swearing that that is not the fact, do you, as they understood it?

A. Well, I don't know whether this is as they understood it or not.

Q. Well, if they swore that they understood it that way, did you think that they did not understand it that way? A. Possibly they might not.

Q. And it is possible they did understand it that way, is it not? A. They might have; yes.

Q. And you told each and every one of them that you couldn't make an agreement with them, didn't you? A. Yes, previous to locating them.

Q. And you told them you couldn't make an agreement with them previous to making final proof, didn't you? A. Yes, sir.

Q. Now, if these witnesses swear that they understood the arrangement to be that you would sell the land for them after they proved up, so that they would make at least \$150.00 over what it cost them, that that was their understanding of the arrangement, you don't wish to be understood as swearing that they didn't understand it that way, do you?

Mr. GORDON.—I object to that as argument.

A. There was no understanding that I should sell the land for them whatever. [1643—1313]

Mr. TANNAHILL.—Q. Now, you had them sign those affidavits as you stated, did you? A. Yes, sir.

Q. And those affidavits you say probably set forth the circumstances as they understood them?

(Testimony of Harvey J. Steffey.)

A. Very likely.

Q. Now, Mr. Steffey, you are not on very friendly terms with Mr. Dwyer or Mr. Kettenbach or Mr. Kester, are you? A. Not with Mr. Dwyer, no.

Q. Or with Mr. Kester or Mr. Kettenbach?

A. Well, nothing, no; no real intimacy.

Q. Now, do you know Herb. Cole? A. Yes, sir.

Q. I will ask you if you didn't have a talk with Herb. Cole regarding this transaction, in Moscow, in the spring of 1910, in which you stated to Herb. Cole, in the Hotel Moscow, yourself and Herb. Cole being present, that "they have done me dirt and I am going to say anything I can to cinch them," or words in substance and to that effect? A. No, sir.

Q. You never made any such statement as that at all? A. No, sir.

Q. You never had any talk, conversation with Herb. Cole about it, did you?

A. Possibly. Oh, yes, very often.

Q. But you never told him you was going to swear anything you could to cinch them? A. No, sir.

Q. Do you remember of having a talk with Sol. Caldwell regarding this matter, in Pierce, in the fall of 1908, or about that time?

A. I very often discussed the matter with him, yes.

Q. Do you remember of telling him at that time, in Pierce, Nez Perce County, Idaho, yourself, Sol. Caldwell and none others being [1644—1314] present, that "they have given me dirt and I am going to cinch them and will swear to anything I can

(Testimony of Harvey J. Steffey.)

to cinch them," or words in substance and to that effect? A. No, sir.

Q. Nothing of that kind?

A. No, sir. I am not in the habit of using the word "dirt" whatever.

Q. You never had any such conversation as that with him? A. I have not.

Q. Did you tell him they hadn't done right by you and you was going to cinch them?

A. Very likely I did. I never told him I would cinch them, but I very often told him they didn't do right by me.

Q. And you told him you was going to make them all the trouble you could, didn't you?

A. No, I think not.

Q. Do you remember of having a conversation with William B. Benton last fall, in Lewiston, Nez Perce County, Idaho, in which you stated, yourself and William B. Benton being present, in which you stated that "they have not done the square thing by me and I am going to give it back to them," or words in substance and to that effect?

A. No, sir, I never had no conversation with Mr. William Benton whatever in regard to any of this land business.

Q. You never made any statement to him that you was going to swear to anything you could to cinch them? A. None whatever.

Q. You had no conversation at all with him in regard to it at any time? A. Never.

Q. Now, did you tell Frank J. Bonney that if he

(Testimony of Harvey J. Steffey.)

would come down and testify for the Government regarding these transactions, this conversation [1645—1315] occurring in Nez Perce County, Idaho, in the spring or early winter, or late winter of 1910, that he would stand a good chance to get this land back, or words in substance and to that effect?

A. No, sir.

Q. Nothing of the kind? A. None whatever.

Q. Then, did you tell Frank J. Bonney that they had given you the worst of it and you was going to even up with them, or words in substance and to that effect?

A. Possibly I may have mentioned the fact that I didn't think they had done right by me; I very likely did.

Q. Did you tell him you was going to get back at them, going to even up with them? A. No, sir.

Q. And you didn't tell Clinton E. Perkins that?

A. No, sir.

Q. Or Charlie Myers? A. No, sir.

Q. At any time? A. No, sir, never.

Q. And you didn't tell Jolly that? A. No, sir.

Q. J. T. Jolly, I believe, is his name. You didn't tell him that? A. No, sir.

Q. Now, you stated, Mr. Steffey, that at one time when Mr. Dwyer talked to you about this transaction that Mr. Kester was in the bank and you and Dwyer was on the outside of the cage, and Kester was over on the inside? A. Yes, sir.

Q. Was that before or after these people had made final proof?

(Testimony of Harvey J. Steffey.)

A. Well, some of them hadn't been located at that time. [1646—1316]

Q. That was before some of them were located?

A. Yes, sir.

Q. What did Kester say about it?

A. Well, I don't remember exactly what he said, about it, but he agreed and seemed well pleased that the prospects of getting good claims was all right.

Q. But you can't tell anything that Kester said?

A. Not exactly, no.

Q. You have no recollection of anything he said?

A. Only that he agreed to the wine supper.

Q. And you don't know what he said about it?

A. No, not in substance, only that he agreed that it was good to get those kind of claims.

Q. Where was Mr. Kester standing?

A. Inside of the cashier's window.

Q. Were there other people in the bank at the time?

A. I don't think there was anybody there with the exception of Dwyer and myself.

Q. It was a public place, was it not?

A. Yes, sir.

Q. People going out and coming in?

A. Yes, sir.

Q. And there was nothing wrong about the transactions that you people discussed there in Mr. Kester's presence, was there?

(No answer.)

Q. Simply a matter that you generally discussed around where other people was, wasn't it, where

(Testimony of Harvey J. Steffey.)

people would likely come in and go out?

A. Oh! The place itself? I didn't exactly understand the question.

Q. I say there was nothing really wrong about the matter that you discussed there; it was such matters as you would naturally discuss or [1647—1317] wouldn't be afraid to discuss in a place where people would come and go?

A. Well, I don't know; it is as you take it. It was about locating people on these claims up there that I speak of.

Q. And you think there was really something wrong about what you was talking about?

A. Well, it looks as though the Government thought it was wrong.

Q. Well, I am asking you what you thought about it. A. I think it was wrong.

Q. There was other employees of the bank there?

A. I think there was.

Q. Now, when did you first wake up to the realization of the fact that there was something wrong about this transaction?

A. Before I entered into it.

Q. When did you make up your mind to tell the Government officials about it?

A. Well, some time after Dwyer had tried to sell my barn, and did other things in connection with it.

Q. As a matter of fact, you did it more to even up with Dwyer than anything else, didn't you?

A. No, I was perfectly even with him before.

Q. You was even with him before? Then did you

(Testimony of Harvey J. Steffey.)

do it to even up with Kester and Kettenbach?

A. I had nothing to even up with them.

Q. But if you hadn't been mad at Dwyer you wouldn't have done it, would you?

A. Possibly I might.

Q. It wasn't for the purpose of vindicating the laws of the great commonwealth that you did it, then, was it? A. Not exactly, no, sir.

Q. It wasn't because you had repented of anything wrong that you had done or a kind of remorse, or anything of that kind?

A. Oh, not in particular, no, sir. [1648—1318]

Q. But it was simply to even up with Dwyer?

A. No; I considered myself even with him.

Q. You considered yourself even, but you wanted to go him one better? A. No, not in particular.

Q. You have been in the employ of the Government for some time, haven't you? A. No, sir.

Q. You never was? A. I never was.

Q. You have been drawing money from them right along, haven't you? A. Only as a witness.

Q. When did you draw any witness fees?

A. To Boise and return, and Moscow and return.

Q. You haven't received any pay from them for anything else? A. No, sir.

Q. You didn't receive any pay for going up to see Bonney and Myers and these entrymen to try to get them to come down and swear against Dwyer, did you?

A. No, sir; that was done at my expense and at my request.

(Testimony of Harvey J. Steffey.)

Q. You have been helping the Government agents all you could, giving them all the information you could, haven't you?

A. I don't know what they consider it; I have given them all the information possible.

Q. You have been in close consultation with them all the time when they are here?

A. Not very often.

Q. Now, as a matter of fact, Mr. Steffey, you never claimed but a half interest in that barn, did you?

A. That is all.

Q. And Dwyer rented it to Reed, did he not, T. B. Reed? A. No, he didn't rent it. [1649—1319]

Q. Did he sell it to him?

A. He sold it outright to him.

Q. Didn't you have Charlie McDonald write a letter to Reed that you would hold him responsible for half of the rent of that barn?

A. I had Mr. McDonald write to Reed in regard to the rent of the barn.

Q. Mr. Steffey, in your direct examination you testified that this conversation with Mr. Kester was about two weeks before final proof was made.

Mr. GORDON.—We object to that.

Mr. TANNAHILL.—Q. Was that this conversation that you refer to with Mr. Dwyer and yourself, when Kester was in the bank?

Mr. GORDON.—I object to that, as that isn't the exact testimony of the witness in his examination in chief, but his testimony relative to that is exactly as he told it on cross-examination.

(Testimony of Harvey J. Steffey.)

Mr. TANNAPILL.—Answer the question.

A. I did not.

Q. Now, when was this conversation that you had with Mr. Dwyer, when Mr. Kester was in the bank, in relation to the time final proof was made on any of these claims?

A. Before the location, before I located these people on claims.

Q. You testified that Mr. Kettenbach, that you went to Mr. Kettenbach to make arrangements for the money for some of these people to prove up with. How long was that before final proof was made?

A. I think possibly that was about two weeks, although I couldn't say positively.

Q. And Mr. Kettenbach told you to draw the check on your own account? A. Yes, sir.

Q. Just the same as you had been doing before?

A. Yes. [1650—1320]

Q. That is the only talk you had with Mr. Kettenbach regarding it, is it?

A. That is the only time I ever spoke to Mr. Kettenbach—

Q. And you didn't tell him then anything about any arrangements with these entrymen?

A. Oh, yes; I spoke to him before, when he said he would make the arrangements with Mr. Smith.

Q. What did you tell him?

A. That I had these people, that they were coming down to prove up on these claims, and I asked him where I was going to get the money.

Q. You didn't tell him anything about any con-

(Testimony of Harvey J. Steffey.)

tract or agreement you had with them that they were to convey the land to Mr. Kester and Kettenbach?

A. No, I think not, at the time. I think,—I am quite sure I didn't tell him anything of that kind.

Q. All you told him was that these people were coming down to prove up and wanted to get the money for them to prove up with? A. Yes.

Q. And that conversation that you say you and Dwyer had in the presence of Mr. Kester, or when Kester was in the bank, is the only conversation you ever had with Kester regarding it?

A. Regarding the entries, yes.

Q. And the only conversation you ever had in Kester's presence regarding them?

A. In regard to the entries, yes.

Q. Now, you say you had a talk with Mr. Dwyer regarding the Lewiston National Bank being interested with him in these transactions. Where did that conversation take place?

A. Well, I couldn't say positively, but in some of our conversations and talk during the time we was working together, camping out nights somewhere, it possibly occurred some way there; I can't recall the time and place, though. [1651—1321]

Q. What was said in that conversation?

A. That he had no trouble whatever in getting the bank interested in this timber business.

Q. Was that all that was said?

A. All that I can distinctly remember, yes.

Q. You don't remember anything else that was

(Testimony of Harvey J. Steffey.)

said? A. Not definitely, no.

Q. Now, you say you had a conversation with Mr. Kester after these claims were deeded, in which he told you that you would get what was coming to you, or words to that effect? A. Yes, sir.

Q. Where did that conversation take place?

A. On the streets of Lewiston.

Q. Whereabouts on the street?

A. Right in front of Ed. Wiggins' cigar-store.

Q. What was said?

A. I told him there was a misunderstanding between Mr. Dwyer and myself with regard to my remuneration for locating these people on the claims, and he told me then to just let it go and he would see that I would get all that I wanted and all that I claimed, or possibly more, just to leave it to him and make no trouble.

Q. That is all that was said?

A. At that time; and I told him that I would.

Q. And you say you have no grievance against Mr. Kester or Mr. Kettenbach?

A. None whatever.

Q. They paid you for the work you did for them?

A. In some respects, yes.

Q. Now, then, didn't you say you had an understanding with them that you was to get \$100.00 out of the Myers claims?

A. No, I had no understanding with them.

Q. Well, what was your understanding regarding the Myers claim? [1652—1322]

A. I had the understanding with Mr. Dwyer.

(Testimony of Harvey J. Steffey.)

Q. Well, with Mr. Dwyer. That you was to get \$100.00 out of the Myers claims? A. Yes.

Q. Now, you say that Mr. Dwyer had you go and have these witnesses sign those affidavits. Where did you have your talk regarding that?

A. That was in Moscow.

Q. What was said?

A. The typewritten forms were given to me and I was told to go up there and have all those entry-men that had already made out deeds, have them sign those affidavits in addition.

Q. Now, you say Bonney got \$212.00 out of his claim. You also testified on direct examination that he was to get at least \$175.00. A. Yes.

Q. Now, your arrangement with Bonney was a little different from what it was with the rest of them, wasn't it? A. Well, no; about the same.

Q. And you did tell Bonney that you would sell the claim so that he would get at least \$175.00 over and above expenses?

A. I don't remember of ever telling any of them that I would sell their claims for them.

Q. But you told Bonney that you couldn't make any agreement with him too, didn't you?

A. I think I did.

Q. And you left him with that understanding?

A. I don't know what his understanding was, but that is what I told him. [1653—1323]

Q. Now, you bought another claim from Bonney, didn't you?

(No answer.)

(Testimony of Harvey J. Steffey.)

Q. You bought another claim from Bonney, didn't you? A. Not directly; no.

Q. Who did you buy that for?

A. Mr. Herb. Cole bought that.

Q. Mr. Herb. Cole bought that? A. Yes, sir.

Q. Well, you did the buying—made the contract—didn't you?

A. Well, yes; I bought it for Mr. Cole.

Q. And did you buy that for Mr. Cole before he filed on it, too?

A. Oh, no; that was his homestead that he had proved up on.

Q. Now, then, do you know whether Bonney and Perkins used the money which you gave them to make final proof with or not?

A. Well, I think they did, yes.

Q. Don't you know that they used their own money to make final proof with?

A. I don't think they did.

Q. If they swore on the stand that they did, would you believe what they said?

A. Not under the circumstances, I don't think I would.

Q. You would not believe them at all?

A. Not about that.

Q. Don't you know that Bonney got the money other ways and made his proof and kept the money which you gave him?

A. Well, he may have done that.

Q. Don't you know that Perkins sold stock and got the money to make his proof, and kept the money

(Testimony of Harvey J. Steffey.)

that you gave him? A. No.

Q. And didn't use it at all for the making of proof?

A. I don't know it.

Q. He may have done that? [1654—1324]

A. He may have done it.

Q. Well, now then, tell us, Mr. Steffey, just what you told these entrymen; just the language that you used and the language they used?

A. In regard to what?

Q. In regard to taking up these claims?

A. I told them—I guaranteed that they would—

Q. Now don't say any conclusion. I want you to give the language that you used; not what you agreed to do or guaranteed to do, or anything of that kind.

A. Guaranteed to do, is what I said to them.

Q. No; that is not the language that you used. I want to know just what you said, and what they said.

A. I guaranteed to give them \$200.00—that they would make \$200.00 out of their entry.

Q. Now, is that all that was said?

A. Oh, there might have been other trivial matters that we discussed; but that was the substance of the agreement.

Q. Now, I didn't ask you for the substance; I asked you for what you said and what they said.

A. Well, that's what I said.

Q. Well, what did you say?

A. Well, I agreed to give them \$200.00—that they would make \$200.00 out of the claim, rather.

Q. Now, how did that come up?

(Testimony of Harvey J. Steffey.)

A. Just that way.

Q. Now, there was more than that said. You know that, don't you, Mr. Steffey?

A. Well, I can't go back that far and remember the details; but that is what I told them.

Q. Well, what did they say?

A. Well, they agreed to it. They were willing to make the [1655—1325] entry.

Q. And you can't remember a single word that was said? A. Oh, yes, I can.

Q. Well, what did they say?

A. I guaranteed that they would make \$200.00 at least out of their entry.

Q. Now, they didn't say that "I guarantee that they would make \$200.00 over expenses"; you know that, don't you?

A. No, they didn't say that; I said that.

Q. Well, what else did you say?

A. Well, I couldn't say exactly what else I did say.

Q. Just simply that "I will guarantee you that you will make at least \$200.00 over and above expenses"? Is that right?

A. Well, I don't know that I at that time mentioned the word "expenses."

Q. Well, that they would make \$200.00 out of it?

A. That they would make \$200.00 out of their entry.

Q. And that's all that was said? A. Yes, sir.

Q. That is everything that you can remember that was said? A. Yes, sir.

Q. Now, then, that was in relation to the Perkins

(Testimony of Harvey J. Steffey.)

claim, was it?

A. Well, that was about the general character of it in relation to all of those locations that I made.

Q. Now, what was said about the Jolly claim—the same thing?

A. That I would guarantee they made \$200.00.

Q. And what was said about the Bonney claim?

A. That I would guarantee he would make \$200.00—or \$175.00, I am quite sure.

Q. What was said about the Myers claims?

A. Well, the Myers claims was a little different.

Q. Well, what was said about them? [1656—1326]

A. Well, he was to get \$150.00 or \$175.00.

Q. What was said about the Mary A. Loney claim? Now, give us the language that was used there as near as you can.

A. That is as near as I can get at it.

Q. All right. Now, what else was said about the Mary A. Loney claim?

A. I guaranteed that she would make \$200.00.

Q. And that is all that you can remember that was said? A. Just about, yes.

Q. Now, you took those people to the claims, did you? A. Yes, sir.

Q. What was your purpose in taking them to the claims?

A. Well, that was one of the requirements.

Q. Did you show them the corners?

A. Sometimes yes—not all of the corners. I always showed them the line or a corner.

(Testimony of Harvey J. Steffey.)

Q. Well, did you take them to the claims for the purpose of looking at the timber?

A. Well, no; I don't think that was really my intention. It was simply—

Q. What was your intention?

A. To comply with the law and take them to the claims, as the law required to take them on each legal subdivision.

Q. I see. You were not so particular about them complying with the law regarding agreements. Why were you so particular in regard to complying with the law with regard to going on the premises?

A. Oh, I wasn't so particular; it was simply to get the land the best and easiest I thought possible.

Q. But you did that so that they would be satisfied that they had seen the land and had complied with the law, did you not? A. Yes.

Q. So that they would not have to go to the land office and [1657—1327] swear that they had been on the land when they hadn't?

A. Well, not so much that, but so that it wouldn't give anyone an opportunity to contest them and so that they wouldn't lose their claims. There was a whole lot of contesting going on there.

Q. You couldn't make them believe that they had been on the land when they hadn't, could you?

A. I don't think any of them people I could.

Q. They were people who wanted to comply with the law?

A. Well, not that so much, but the country was very easy to get to, and accessible, and it would have

(Testimony of Harvey J. Steffey.)

been hard to deceive them.

Q. Now, I believe you said you went to Dwyer and talked to him about these claims that you had; is that right? A. Yes, sir.

Q. Dwyer didn't come to you?

A. No; I think I went to Dwyer.

Q. Some of these deeds you made out yourself, did you not, Mr. Steffey? A. I don't think I did.

Q. You say that Dwyer went to the claims and looked over these claims before the deal was finally closed? A. Some of them.

Q. Didn't he go and look over all of them?

A. Not all of them.

Q. Well, some of them he had been over before that, had he not? A. He may have been.

Q. But he satisfied himself as to the claims, and the description, and the timber that was on them, before the deal was finally closed, did he?

A. He what?

Q. Satisfied himself as to the claims, and the descriptions of them, before the deal was finally closed, didn't he? A. I think he did, yes. [1658—1328]

Q. Now, what was said between you and Dwyer concerning the locating of these people on this land? Just give the language that was used as near as you can.

A. Well, I mentioned the fact that I had found some claims that looked pretty good to me, and talking the matter over, and Mr. Dwyer says, "Well, get somebody to locate on them, and tell them we will

(Testimony of Harvey J. Steffey.)

give them \$200.00 and furnish the money to prove up with."

Q. Was there anything else that was said?

A. Oh, there might have been.

Q. Can you think of anything else that was said?

A. Nothing in particular, no.

Q. Now, Mr. Steffey, how do you know that you didn't have sufficient funds in the bank to meet these checks—all of these checks that went in—that you drew?

A. I had a bank-book.

Q. You had a bank-book? A. Yes, sir.

Q. Did you keep a check on it all the time?

A. I used to hand it in frequently.

Q. Well, some of these checks that you drew, you did have the money there to meet them with, did you not?

A. Some of them, yes.

Q. And the most of them you had the money there to meet them with, didn't you?

A. I think not the most of them.

Q. You carried a bank account there, and you usually had money in the bank, didn't you?

A. Sometimes, yes.

Q. When you didn't have, you had no trouble getting your checks honored?

A. No.

Q. You never had any checks turned down on you? [1659—1329]

A. Once.

Q. Once? A. Yes, sir.

Q. That was after you had had some trouble, wasn't it?

A. No; I had no trouble.

Q. When was that?

A. That was after the bank had changed hands.

(Testimony of Harvey J. Steffey.)

Q. Oh, after the bank had changed hands?

A. Yes, sir.

Q. Well, while Kester and Kettenbach were there you never had any trouble with your checks, did you?

A. Never.

Q. Now, Mr. Steffey, you stated something about a note at the bank for \$800.00, and in relation to that was a statement concerning a relinquishment. What was the circumstances of that?

A. I don't exactly know the circumstances myself. It was something in reference to the Shumaker claim that Mr. Dwyer had contested and won; and even at that time the circumstances was dim in my own mind, and I never tried to learn the exact details of it.

Q. Well, this note was paid when the claim was deeded, was it?

A. When Mr. Myers deeded the claim to Kester and Kettenbach, why it was straightened up somehow or other.

Q. Well, that contest or that relinquishment had nothing to do with the claims that Myers entered, did it? A. That Myers filed on?

Q. Yes.

A. Oh, yes; that was the claim.

Q. That was the claim that Myers filed on?

A. Yes, sir.

Q. But you don't know what the circumstances were regarding that? A. No, not entirely.

Q. But that \$800.00 note was taken up at the time?
[1660—1330]

(Testimony of Harvey J. Steffey.)

A. At the time he made the transfer, yes.

Q. At the time he made the transfer?

A. Yes.

Q. Now, you gave some notes to the bank at different times to cover overdrafts that you had there, did you not? A. Yes, sir.

Q. A couple of \$350.00 notes?

A. Well, some for \$1,000.00, I think, or over, or \$1200.00, I think was the amounts.

Q. And you gave some just about the time you was making these transactions of furnishing the money for these entrymen to make their proof, did you not? A. Yes, sir.

Q. One of \$350.00, and one of \$300.00 or \$400.00?

A. Yes—\$800.00, or \$900.00, or \$1,000.00; I have forgotten just exactly what the amounts were.

Q. And when the claims were deeded over your notes were taken up? A. Yes, sir.

Q. Now, this conversation that you say you and Dwyer had in the presence of Mr. Kester, and the conversation you had with Mr. Kettenbach regarding the getting of the money for one of these entrymen to make proof, is the only conversations that you had either with Mr. Dwyer—that you and Dwyer had either with or in the presence of Mr. Kester or Mr. Kettenbach, is it? A. Yes, sir.

Mr. TANNAHILL.—That's all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Steffey, you have testified that you knew that it was not proper to make an agreement with

(Testimony of Harvey J. Steffey.)

these people, did you not? A. I did.

Q. And I will ask you whether or not that is not the reason you [1661—1331] told them that you didn't have an agreement with them, so that they could ease their consciences when they went to the land office and made their sworn statements?

A. Yes, sir.

Q. They understood it that way, too, didn't they?

A. Yes, sir, they did.

Q. In other words, you were making evidence, in advance, just as soon as you started into this business?

A. Yes, sir.

Q. I will ask you, Mr. Steffey, whether or not any reason was given you why you should get these affidavits, just after the investigations in South Idaho of the Barber entries? A. Yes, sir.

Q. What was the reason that was given you?

A. I understood the suggestion came from Mr. Borah, that they would protect themselves additionally with these affidavits; that they were always given in the case of a transfer in South Idaho.

Mr. TANNAHILL.—I move to strike out the answer of the witness as to a conclusion as to what he understood, it not being a statement of the fact.

Mr. GORDON.—Q. I will ask you whether or not you got them so as to keep the witnesses from testifying to any contrary statement? A. Yes, sir.

Q. Now, the question was asked you as to whether you and Dwyer didn't go to this land before the deal was finally closed. What did you mean "before

(Testimony of Harvey J. Steffey.)

the deal was finally closed''? Did you mean before the deeds were made? A. Yes.

Q. I will ask you whether or not your deal and arrangement with Dwyer wasn't finally closed after that first conversation you had with him? [1662—1332]

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Q. Answer the question.

A. What conversation?

Q. I say, you had no further agreement with Mr. Dwyer after your first conversation you had with him, and before you located any of these entrymen?

A. No.

Q. All the agreement you had with him was before that time?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. You know Mr. Herb. Cole, do you? A. Yes, sir.

Q. Do you know what relation he is to one of these defendants?

A. Why, he is the husband of George Kester's sister.

Q. Do you know Sol. Caldwell?

A. Yes, sir.

Q. What relation is he to one of the defendants?

A. He is some distant connection—a cousin, I understand.

Q. Of who? A. Of Kettenbach.

(Testimony of Harvey J. Steffey.)

Q. Will. Kettenbach? A. Yes.

Q. Do you know Mr. William B. Benton?

A. Yes, sir.

Q. Do you know what relation he is to Mr. William F. Kettenbach?

A. He is some connection or other—a cousin, I think.

Q. Now, when you were asked what you told these witnesses, or these entrymen, you answered on two or three different occasions that all you could remember of the conversation was that you guaranteed them [1663—1333] that they would get \$200.00. Now, was that all of the conversation, or was that all of the conversation relative to the guaranty?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Well, that was—of course, I can't remember of any other conversation, but that was the conversation that we had when we both agreed to the arrangements. That is all that I can state. I can't remember the details.

Q. Yes; but now, what were they to do? What did you tell them they would have to do?

A. They would have to file on this land, and—

Mr. TANNAHILL.—We object to that—just wait a minute, Mr. Gordon—we object to that as leading and suggestive, and calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Q. Well, I will ask the question in another way: Was there anything said at that time as to what they should do to get this guaranty?

(Testimony of Harvey J. Steffey.)

A. Oh, yes.

Q. Well, now, what was said?

Mr. TANNAHILL.—The same objection.

WITNESS.—That they was to file on the land, make final proof, and I was to bear all the expenses.

Mr. GORDON.—Yes?

WITNESS.—And they was to deed the land over to who I said.

Mr. GORDON.—Yes. Now, you have—

Mr. TANNAHILL.—I move to strike out the answer of the witness, on the ground that it is a conclusion and not a statement of the fact.

Mr. GORDON.—Q. I will ask you whether that was a conclusion, or whether that was what you told each one of the entrymen?

Mr. TANNAHILL.—The same objection, and on the further ground that it is leading and suggestive.

WITNESS.—Yes; I told each one of them that.
[1664—1334]

Mr. GORDON.—Q. Now, you said twice on cross-examination that there was no agreement that you were to sell the land for them. I will ask you if the statement that you have just made is the reason that you said you wasn't to sell the land for them?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion of the witness, argumentative, irrelevant, and immaterial. It makes no difference what his reasons were.

Mr. GORDON.—Answer the question.

A. Why, I was simply stating it because it was the exact truth. There was never any question—never

(Testimony of Harvey J. Steffey.)

any agreement, or never any understanding that I was to sell the land for them.

Q. What was the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—That they was to get \$200.00 for their entry.

Mr. GORDON.—Q. And were they to do anything for the \$200.00?

Mr. TANNAHILL.—The same objection.

WITNESS.—They were to file on the claim and prove up on it and deed it to whoever I designated.

Mr. GORDON.—Q. Now, there were two claims that you mentioned that you and Mr. Dwyer went to see some time before final proof. Do you remember which they were? A. Yes, sir.

Q. Which were they?

A. Mrs. Loney's and Mrs. Jolly's claims.

Q. Now, had you had any talk with Mr. Dwyer about those claims before the entrymen were located?

A. Yes.

Q. Did you tell him anything about them?

A. Yes, sir. [1665—1335]

Q. What did you tell him?

A. I told him that they were rather indifferent claims; that they were at that time not exceptionally good locations, and described them as near as I could; and finally he told me to locate them anyway.

Q. Now, counsel in his questions was evidently trying to bring out the itinerary of your entire life, and I will ask you when you were born, Mr. Steffey?

A. When?

(Testimony of Harvey J. Steffey.)

Q. Yes—what year?

A. The 25th day of November, 1858.

Q. 1858? A. Yes, sir.

Q. And the first part of your testimony, in which you were answering as to how long you had stayed at certain places, and where you had been, that was all prior to your first going to California; is that correct? A. Yes, sir.

Q. And do you remember about how old you were when you first went to California?

A. No, I don't.

Q. It was somewhere between 10 and 12 years old?

A. Yes.

Q. I ask you that because I thought you said you first went to California in the early seventies; is that correct?

A. I think it was in the latter part of either 1868 or 1869 somewhere. I went alone.

Q. And then you stayed in California for a number of years—three or four years—and went to school, did you? A. Yes, sir.

Q. Now, how long have you been in Idaho?

A. I have been in the northern part since the fall of '82.

Q. Since '82? [1666—1336] A. Yes, sir.

Q. You have practically lived in Idaho how long?—any place in the state?

A. Oh, about 35 years, I guess—or 25 or 26 years.

Q. And Idaho has been your home ever since 1882?

A. Yes, sir.

Q. Now, did Kester and Kettenbach ever pay you

(Testimony of Harvey J. Steffey.)

any money for anything? A. No.

Q. I understood, in response to a question asked you by counsel for the defense, that you said yes, they had paid you for something. I didn't know what it was.

A. Well, indirectly. I don't remember of Mr. Kester or Mr. Kettenbach ever paying me anything. I was always paid for what I did for them by Mr. Dwyer, by check.

Q. Now, when these deeds were made I understood you to say that there were some notes in the bank that were paid, in response to a question by Mr. Tannahill; is that correct? A. Yes, sir.

Q. State how that was done. Was the amount of your notes taken out, or—

A. The amount of the expenses for these timber claims were added together, and that amount was given credit to me, and my notes were taken up.

Q. And your notes were taken up from that?

A. Yes, sir.

Q. And where was that settlement made?

A. Well, usually in Mr. Dwyer's office, in the Lewiston National Bank building.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Steffey, these claims were held up for a while, were they [1667—1337] not?

A. Only two of them.

Q. What two was that?

A. Mrs. Loney's and Mrs. Jolly's.

(Testimony of Harvey J. Steffey.)

Q. And Mr. Bartlett held them up, did he not?

A. I don't know whether it was the Register or Receiver.

Q. One of them? A. One of them, yes.

Q. And held up for further investigation?

A. Yes, sir.

Q. Or something of that kind? A. Yes, sir.

Q. Now, you wrote to President Roosevelt a personal letter regarding these two claims, did you not?

A. No. It wasn't in reference to any particular claims.

Q. Well, trouble came up concerning these two claims, didn't it? A. No.

Q. They had nothing to do with the letter you wrote to President Roosevelt?

A. Well, the claims had nothing in particular to do with it. It was the conduct of Mr. Bartlett towards some of the people that I was locating.

Q. And that had nothing to do with these two claims?

A. Not any more than the other claims, no.

Q. But indirectly they did have something to do with them? A. Yes, sir, indirectly.

Q. And because these claims were held up it had something to do with it?

A. The claims—I don't know whether that was the cause of the claims being held up or not.

Q. Well, do you remember that you referred to these two particular claims in your letter, or these entries, in the letter you wrote to [1668—1338] President Roosevelt?

(Testimony of Harvey J. Steffey.)

A. I possibly may have. I don't remember referring to the two claims in particular.

Q. Well, don't you remember telling him that these two claims were all right?

A. Were all right?

Q. Yes, sir, or words to that effect?

A. No, I don't remember.

Q. Was Mr. Bartlett's actions towards the two entrymen your reason, or something to that effect?

A. No. I have a copy of the letter. I don't think I referred to them in that respect at all.

Q. But these two claims did have something to do with your writing the letter?

A. Well, not any more than some of the others. No; I think the one in particular that I referred to was the Jannie Myers claim.

Q. The Jannie Myers claim?

A. Jannie Myers, yes.

Q. And that was one of these, wasn't it?

A. No. No; that claim wasn't held up.

Q. That wasn't held up? A. No.

Q. It wasn't held up, but it was one of the claims in litigation, wasn't it?

A. Oh, one of these that I located? Yes, sir. I thought you was referring to the Mrs. Loney and Mrs. Jolly claims.

Q. No. Do you remember, Mr. Steffey, that the first time you seen Mr. Dwyer was when you was coming out from Pierce City; you was going in and Mr. Dwyer was coming out, and you talked to him about the Lanes' land, and you was telling Mr. Dwyer

(Testimony of Harvey J. Steffey.)

what a nice fellow George Kester was; that the Lanes couldn't have proved up if it hadn't been for him letting the Lanes have the money? [1669—1339]

A. I remember speaking to Mr. Dwyer. That was the time I spoke to him and asked him if he could get the money for Winnie Lane and Joe Lane to prove up on, and that was the time I met him coming from Pierce and I was going in. It was along in the evening; that is, in the afternoon.

Q. Hadn't you just come from Lewiston after their making their proof? A. No.

Q. Are you sure of that?

A. Possibly—yes—I think—

Q. And didn't Mr. Dwyer tell you that Kester had phoned up to him and asked him about the Lanes' land?

A. He may have; I don't recollect it, though. He possibly did. I believe I recollect now that it was after they had proved up, because I was telling him I was disappointed in some people I relied on in getting the money. I remember that quite well.

Q. And you told him that Kester had accommodated them and let the Lanes have the money to prove up on?

A. I think very likely I did tell him that, because Mr. Kester did let them have the money to prove up with.

Q. Now, don't you remember that that was the first time you seen Mr. Dwyer?

A. No, that wasn't the first time I seen him.

Q. That was along about the first time you seen

(Testimony of Harvey J. Steffey.)

him? You never had any business with him before that?

A. No—no business with him before that whatever.

Mr. TANNAHILL.—That's all. [1670—1340]

[Testimony of Mrs. Kittie E. Dwyer, for Complainant.]

Mrs. KITTIE E. DWYER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Kittie E. Dwyer?

A. Yes, sir.

Q. And you are the wife of William Dwyer, are you? A. Yes, sir.

Q. And you have a number of timber claims, have you, that you have purchased? A. Yes, sir.

Q. Do you remember from whom you purchased these claims? A. I do not.

Q. Who transacted the business for you, Mrs. Dwyer? A. Mr. Dwyer.

Q. Have you an independent business of your own, Mrs. Dwyer?

A. Why, I don't quite understand what that means.

Q. Well, I mean are you engaged in any business at all except as a housewife?

A. No. No. I have money that I invest.

Q. Well, now, where did you get that money?

(Testimony of Mrs. Kittie E. Dwyer.)

A. Well, it has been from different sources; from speculation; buying and selling property.

Q. Now, when did you begin speculating in property? A. I think in the year of '87.

Q. And where did you get the money you started with? A. From business.

Q. What business? A. The hotel business.

Q. With whom were you engaged in the hotel business? A. Mr. Dwyer and I.

Q. And it was money that you and he had made in the hotel business; [1671—1341] is that correct?

A. Yes, sir.

Q. Now, what was your first investment in speculation?

A. Well, I can't recall the first. As near as I can remember it was in city property.

Q. Whereabouts? A. In Saginaw, Michigan.

Q. Where? A. In Saginaw, Michigan.

Q. And how long have you been in Idaho?

A. 13 years this November.

Q. And did you bring any money to Idaho with you? A. Yes, sir.

Q. And did you deposit it in a bank?

A. Not all of it. I brought it in drafts and bought property within two weeks after I came here.

Q. And what property did you buy?

A. Clarkston, Washington.

Q. Clarkston what?

A. In Clarkston, Washington.

Q. And that was your home, was it?

A. Yes, sir.

(Testimony of Mrs. Kittie E. Dwyer.)

Q. And you have lived there ever since?

A. No, sir.

Q. You still own that home, do you?

A. Part of it.

Q. And where is the other part? A. I sold it.

Q. Well, now, of what did this home consist—of a tract of land or not? A. Yes, sir.

Q. And how much land was there around this home? [1672—1342] A. Ten acres.

Q. And have you sold the ten acres?

A. Part of it.

Q. And what did you get for the part you sold?

A. \$8,000.00.

Q. And was there a mortgage on it when you sold it? A. Yes, sir.

Q. For how much was the mortgage?

A. I don't just remember now how much it was.

Q. Who held the mortgage?

A. I think the last mortgage that was given on it was given to the Lewiston National Bank, or to Mrs. White, I don't know which.

Q. And do you remember how much it was for?

A. No, sir.

Q. Have you any idea? A. No, I haven't.

Q. Now, outside of your timber holdings do you own any other property in Idaho? A. Yes, sir.

Q. Or Clarkston, in Washington? A. Yes, sir.

Q. What other property have you?

A. I have the property that I live on here—live in here in Idaho.

Q. And when did you purchase that?

(Testimony of Mrs. Kittie E. Dwyer.)

A. I purchased that two years ago last Spring.

Q. And did you pay cash for it?

A. Yes, sir. Well, I paid part cash. It was a business transaction.

Q. Now, can you remember how much cash you paid? A. No, I can't.

Q. Did you attend to it, or did Mr. Dwyer attend to it for you? [1673—1343] A. Mr. Dwyer.

Q. And do you know whether there is a mortgage on it or not? A. Yes, I think there is.

Q. Do you know how much that is?

A. Well, I don't know exactly.

Q. Do you know how much the mortgage was when it was given? A. No, I don't.

Q. Have you an idea of how much it was?

A. Well, I saw the mortgage and read it and signed it, but it has slipped my mind. In doing other business right along I don't just keep track of the amount.

Q. Now, you have a bank account in the Lewiston National Bank, have you not? A. Yes, sir.

Q. And your husband draws on that account whenever he wants to, does he not? A. Yes, sir.

Q. And he signs his own name to checks, does he not? A. Sometimes he does.

Q. And he has no independent account there of his own? A. I don't know.

Q. Well, he has authority to draw on your bank account whenever he sees fit; is that correct?

A. Yes, sir.

(Testimony of Mrs. Kittie E. Dwyer.)

Q. Now, do you know how many timber claims you own?

Mr. TANNAHILL.—We object to that question unless it is limited to the claims in issue.

Mr. GORDON.—Answer the question, please.

A. Eleven, I think; I am not sure.

Q. Now, do you know from whom you purchased those claims—any one of them?

A. I couldn't be positive unless I saw them.
[1674—1344]

Q. Did you attend to the purchase of any of them yourself?

A. I think I did some of them, but I wouldn't be positive about that.

Q. Now, didn't Mr. Dwyer attend to the business management and the purchase of all those claims?

A. No, I don't think he did. I think I—he may have; I am not positive.

Q. Do you know what you paid for any of these claims?

A. I wouldn't be positive unless I saw the papers.

Q. Well, could you tell from the description of them what you paid for them? A. No, sir.

Q. How would you tell?

A. I would tell by the deeds.

Q. By the deeds? A. By the records, yes.

Q. By what records? Would that refresh your memory if I would show you the deeds of these various entries, could you tell how much you paid for them? A. Certainly.

Q. Well, did you buy a piece of property from

(Testimony of Mrs. Kittie E. Dwyer.)

Mrs. Hattie Rowland?

A. I am not sure of the name.

Q. And would you know by the descriptions of it whether you had purchased it?

A. Do you mean by— No, I wouldn't be positive.

Q. The quarter section. I mean? A. No.

Q. Now, do you remember whether or not you bought a timber claim from Mrs. Elizabeth White?

A. Mrs. Elizabeth White?

Q. Yes. [1675—1345]

A. No, I don't think I did.

Q. Do you know whether you bought a claim that was owned by Mrs. Mamie P. White?

A. No, I don't think I did.

Q. Do you know whether you ever purchased a claim from a man named McMillan?

A. I am not sure. I don't recall the name.

Q. Did you buy a timber claim from Fred. Justice?

A. I am not positive.

Q. Do you know whether you bought a timber claim from Mrs. Frances Justice? A. Yes.

Q. What did you give for that?

A. I don't recall just now how much I gave for that.

Q. Did you attend to the transaction of that, or did your husband attend to it? A. A part of it.

Q. Now, with whom did you do the dealing for the sale of that land, or for the purchase of that land?

A. Why, I won't be sure. I think that I dealt

(Testimony of Mrs. Kittie E. Dwyer.)
with Mrs. Justice.

Q. Do you know where it was that you dealt with her?

A. Why, we must have started the negotiations in Clarkston, because I live there.

Q. Have you any distinct recollection of any dealings with reference to purchasing her timber claim?

A. I have not.

Q. You have none whatever? A. No, sir.

Q. Now, Mrs. Dwyer, have you any mortgages or mortgage on any of your timber claims? A. Yes.

Q. Who holds the mortgage? [1676—1346]

A. I don't know whether you would call them mortgages or not; they are in the Trust Company.

Q. Well, now, how are they in the Trust Company? Under what arrangement are they in the Trust Company?

A. Well, I borrowed money on them and they hold them as security.

Q. What do they hold them as security for?

A. However the state law provides. I can't explain it, but it was explained thoroughly to me—I borrowed the money on them.

Q. And when did you first borrow any money on the timber claims?

A. Oh, I have been borrowing on them ever since I first began to buy them.

Q. Now, do you remember how much money you borrowed on them? A. I do not.

Q. Is it as much as \$1,000.00?

A. On all of them?

(Testimony of Mrs. Kittie E. Dwyer.)

Q. Yes. A. Together?

Q. Yes.

A. Oh, I think it must be much more than that.

Q. Was it \$2,000.00? A. Yes.

Q. Well, was it \$3,000.00?

A. Yes; I think it is more than that.

Q. Now, how much was it?

A. Well, I wouldn't like to say. It is as much as I possibly or probably could borrow on them, because if I saw a chance to buy more property, why I would try to raise the mortgage on all of it—any of the property I might have.

Q. Now, did you borrow any money from the Lewiston National Bank? A. Yes, sir.

Q. On your timber claims?

A. Yes, sir. [1677—1347]

Q. Have you also borrowed some from the Idaho Trust Company on your timber claims?

A. I may have at some time.

Q. Have you recently?

A. I am not sure. I don't think so.

Q. When was the last time that you remember of borrowing any money on any of your timber claims? A. Oh, I think it must be nearly a year.

Q. How long ago? A. Within a year, I think.

Q. Now, can you fix the period any more definitely than that? A. I can not.

Q. Well, has it been a month ago?

A. Oh, it is more than a month ago, but I don't think it has been more than a year.

Q. And do you remember how much it was you

(Testimony of Mrs. Kittie E. Dwyer.)

borrowed then? A. I do not.

Q. Well, was it \$1,000.00, or was it more?

A. No, I can't remember. Whatever I lack I try to borrow.

Q. And do you know whether or not you ever gave any mortgages to the Lewiston National Bank on your timber claims to make good some overdraft in your bank account?

A. I am not sure whether it was to the Lewiston National Bank or whether it was to Mrs. White that carried the mortgages, but I think I have had mortgages carried by both of them.

Q. With whom did you transact your business concerning Mrs. White lending you money?

A. Mr. Kettenbach.

Q. Mr. William F. Kettenbach? A. Yes, sir.

Q. Have you any distinct recollection of borrowing from Mr. William F. Kettenbach any of Mrs. White's money on your timber claims? [1678—1348] A. I am not sure, but I think I did.

Q. Do you know when it was? A. I do not.

Q. Has it been in the last year? A. No, sir.

Q. Now, do you remember whether you borrowed on all of your timber claims, or only on certain of them? A. I think I borrowed on all of them.

Q. You put them all in? A. At different times.

Q. And do you ever remember of signing an agreement with either the Lewiston National Bank or the Idaho Trust Company? A. An agreement?

Q. Yes.

(Testimony of Mrs. Kittie E. Dwyer.)

A. An agreement? For what, I mean? I have signed a mortgage. Is that an agreement?

Q. You say you signed a mortgage on your timber claims? A. Yes, sir.

Q. How many? A. How many mortgages?

Q. Yes.

A. Well, as I would get them I would raise more money and would make new mortgages and take up the old ones and make another.

Q. Do you know how much any of these mortgages were for? A. I do not.

Q. Have you paid any of those mortgages?

A. Why, they are all paid but the one.

Q. All but one? A. I think so.

Q. Then, you have no idea how much that is for?

A. I have not.

Q. And did you ever make a deed of this property to anybody? [1679—1349]

A. I don't see how I could make a deed when I have it mortgaged. Well, now, perhaps you may call the Idaho Trust Company, or whatever it is—I always get those different concerns mixed—if it is the Idaho Trust Company it is where Mr. Frank Kettenbach is interested, isn't it?

Q. Yes. A. Is that the Idaho Trust?

Q. That is the Idaho Trust.

A. That is the one that holds the security on my property.

Q. Now, do you remember whether you ever deeded your property to the Idaho Trust Company?

A. I don't know. That is the way the state al-

(Testimony of Mrs. Kittie E. Dwyer.)

lows them to do business. I borrowed the money on that property, but I still own it.

Q. You still own it?

A. To a certain extent; when I pay off that money I own it, I expect.

Q. Now, with whom did you transact that business—this mortgage that you speak about with the Idaho Trust Company? A. Mr. Smith.

Q. Mr. Smith? A. I think so.

Q. And when was that business conducted?—that transaction?

A. Well, I won't be sure of the date. I think it was within a year, but I am not positive.

Q. And is that the only transaction you ever had with the Idaho Trust Company with reference to your timber claim?

A. I think it is. They might have held mortgages before, but I don't recall them.

Q. Now, in the purchase of these timber claims didn't your husband just draw on your bank account and attend to this matter for you?

A. No, sir. He never buys any property for me in my name without consulting me.

Q. And you haven't any recollection of any claim, though, by [1680—1350] name, that he ever consulted you about?

A. There is so many, and so many that I have done business with, that I really—I hate to expose my ignorance, but I am not the least bit good in remembering, and I don't recall them.

Q. Now, did you have any arrangement with Mr.

(Testimony of Mrs. Kittie E. Dwyer.)

Kester whereby he would allow you to overdaw your bank account in the purchase of timber claims?

A. No, sir.

Q. You never did? A. No.

Q. Do you know whether or not your bank account was replenished at times by Mr. Kester crediting you with amounts for expenses of your husband?

A. No, sir.

Q. You know nothing about that? A. No, sir.

Q. Have you carried overdrafts in your bank account that you know of, Mrs. Dwyer?

A. Yes, sir.

Q. Do you know how much those overdrafts would amount to, approximately? A. No, I don't.

Q. Well, I mean would you overdraw your bank account \$500.00 if you knew it?

A. Oh, I don't think so.

Q. You would overdraw it a few dollars?

A. Yes, sir.

Q. \$25.00 or \$30.00?

A. Yes, sir, and pay the interest on the overdraft.

Q. How is that?

A. And always pay the interest on the overdraft.

Q. Well, that would only be small amounts, though? [1681—1351] A. Yes, sir.

Q. You have no recollection of ever overdrawing your account to any large amount—\$200.00, or \$300.00, or \$500.00,—have you?

A. I don't recollect it.

Q. You have no recollection of paying any interest on any large overdrafts?

A. I may have, but I don't remember.

(Testimony of Mrs. Kittie E. Dwyer.)

Q. You don't remember? A. No, sir.

Q. Do you still carry an account with the Lewiston National Bank? A. No, sir.

Q. Do you know how much is in it? A. No, sir.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all.

A recess was thereupon taken until 7:30 o'clock P. M. [1682—1352]

At 7:30 o'clock P. M. on Friday, September 9th, 1910, the hearing was resumed.

[**Testimony of Edward C. Smith, for Complainant.**]

EDWARD C. SMITH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your full name?

A. Edward C. Smith.

Q. And are you an officer in the Idaho Trust Company? A. Yes, sir.

Q. And how long have you been an officer in that company? A. Since the latter part of 1902.

Q. And what is your official position with the Idaho Trust Company?

A. Secretary and Treasurer.

Q. And have you been Secretary and Treasurer from 1902 down to the present time? A. Yes.

Q. Who has been the President of that company during that period? A. Frank W. Kettenbach.

Q. Now, have you the Articles of Incorporation of the Idaho Trust Company? A. No, sir.

(Testimony of Edward C. Smith.)

Q. Have you made a search for them?

A. I made a search for them. I have a copy of them in our minutes.

Q. Well, will you look at the minutes and tell us when the Idaho Trust Company was incorporated, and who the incorporators are.

A. What was the question you asked me? [1683—1353]

Q. When the Idaho Trust Company was incorporated, and who the incorporators were?

A. The names of the incorporators are: Frank W. Kettenbach, Edward C. Smith, Marcus Simpson, A. Freidenrich, and G. A. Smith.

Q. Were they the incorporators? A. Yes, sir.

Q. And what is the date of the incorporation?

A. Well, it was about July, 1902. That is the date we have here.

Q. And what is the name of the corporation?

A. Idaho Trust Company.

Q. And the Frank W. Kettenbach you speak of as an incorporator, is he the present President of the institution? A. Yes, sir.

Q. And has been ever since the company was incorporated? A. Yes, sir.

Q. And you are the Edward C. Smith who is one of the incorporators? A. Yes, sir.

Mr. GORDON.—Do you gentlemen waive any further formality as to when the Idaho Trust Company was incorporated, and who the incorporators were?

Mr. BABB.—Yes.

Mr. GORDON.—Do you, Mr. Tannahill?

(Testimony of Edward C. Smith.)

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. What was the capital stock of the Idaho Trust Company when it was incorporated?

A. It had an authorized capital stock of \$200,000.00.

Q. How much of that stock was paid in at the time it was incorporated?

A. Well, I think at the time it was incorporated it was \$26,000— [1684—1354] it would be necessary to figure—

Mr. BABB.—I think it was about \$60,000.00 when it started.

WITNESS.—\$60,000.00?

Mr. BABB.—Yes; I think that is what the statute required.

Mr. GORDON.—Q. Have you the minutes of the Idaho Trust Company—the meetings of the Idaho Trust Company Board? A. Yes, sir.

Q. Have you the stock-book also of the Idaho Trust Company with you?

A. Yes, sir—the stock ledger.

Q. Well, is that the same thing as the stock-book?

A. That is what I would call the stock-book. It isn't the certificate-book.

Q. Have you got that?

A. No, I haven't got the certificates. The ledger gives a memorandum of all the certificates that have been issued and transferred.

Q. It is made up from the certificate-book?

A. Yes, sir. It is what we depend on.

Q. Now, who composed the first Board of Direc-

(Testimony of Edward C. Smith.)

tors of the Idaho Trust Company?

A. Frank W. Kettenbach, Edward C. Smith, Marcus Simpson, A. Freidenrich, and G. A. Smith.

Q. And all the persons who constituted the first Board of Directors were incorporators, were they?

A. Yes, sir.

Q. Now, who subscribed to the stock in the first instance—all who subscribed, and the number of shares that each holds in the company?

A. Frank W. Kettenbach,— Do you want the shares?

Q. Yes?

A. —350; Edward C. Smith, 200; Marcus Simpson, 250; A. Freidenrich, [1685—1355] 100; G. A. Smith, 100; W. F. Kettenbach, 100; Elizabeth White, 50; Grace K. Pfafflin, 50; Amy K. Kettenbach 10; Frank McGrane, 50; W. W. Brown, 20; Otto Kettenbach, 15; James E. Babb, 5.

Q. Do you know whether Mr. Freidenrich is a relative of the Kettenbachs?

A. No, sir, I don't believe he is.

Q. Is Mr. G. A. Smith a relative of yours?

A. No, sir.

Q. And the W. F. Kettenbach that is mentioned by you as holding 100 shares of stock is one of the defendants in this case? A. Yes, sir.

Q. And who is the Elizabeth White that you mentioned?

A. That is William F. Kettenbach's mother in law.

Q. And Grace K. Pfafflin, who is she?

A. William F. Kettenbach's sister.

(Testimony of Edward C. Smith.)

Q. And Amy G. Kettenbach, who is she?

A. Mrs. Frank W. Kettenbach.

Q. And Otto Kettenbach, who is he?

A. He is a nephew of Frank Kettenbach's.

Q. And a cousin of W. F. Kettenbach's?

A. Yes.

Q. Now, what was the value of each share at this time? A. The par value was \$100.00.

Q. And these shares that you have read here were subscribed at the par value? A. Yes, sir.

Q. Now, has the Board of Directors of the Idaho Trust Company been changed since its incorporation?

A. I think so, yes. Let's see—not much. Yes; Mr. Simpson is not living, and Mr. Freidenrich is not a director.

Q. Now, have the Board of Directors that you read been re-elected at each annual meeting? [1686—1356] A. Yes, sir.

Q. Now, who succeeded Mr. Frederick? Is that what you call him? A. Freidenrich.

Q. Who succeeded him on the directorate?

A. I think Mr. William F. Kettenbach.

Q. And who succeeded the other gentleman?

A. Mr. O. A. Kjos.

Q. And did Mr. William F. Kettenbach purchase any more stock when he was elected a director?

A. I don't believe so.

Q. Now, I wish you would turn to the minutes of the Idaho Trust Company and read the minutes of the meeting of the directors when they purchased the

(Testimony of Edward C. Smith.)

stock of the Lewiston National Bank.

A. A meeting of the directors, you say?

Q. Yes. I want all your minute entries concerning that transaction.

A. Well, we had authority from the stockholders as well as the directors.

Q. Well, now, who were the directors at that time?

A. The directors were Frank— Let's see:—

Mr. BABB.—Just read the minutes of the meetings straight. They will probably come out in there.

Mr. GORDON.—Q. Read the date first.

A. September 9, 1907, is the first action the directors took.

Q. September 9, 1907?

A. Yes; authorized the officers to proceed with the—

Q. Well, now, read that minute entry.

A. Do you want the entire minutes?

Q. Yes, sir.

A. (Reading:) Meeting of directors of Idaho Trust Company, September 9, 1907, at the office of the company. [1687—1357]

The following directors were present: Frank W. Kettenbach, O. A. Kjos, Edward C. Smith, and George A. Smith.

Minutes of meeting of July 8, 1907, were read and approved.

On motion of O. A. Kjos, seconded, put to vote and carried, the following resolution was adopted:

WHEREAS, a number of shareholders of this company are also shareholders of the Lewiston

(Testimony of Edward C. Smith.)

National Bank, and the President of this company is also President of said bank, and the public considers the credit of one institution is affected by the credit of the other, and greater economy of operation could be obtained by closer consolidation of the shareholders of these two banks, Therefore,

BE IT RESOLVED, that a complete consolidation of the stock interests of the two institutions be effected, and that the best plan to accomplish this result is for the shareholders of the Lewiston National Bank to sell and deliver their stock to the Idaho Trust Company, and receive in exchange therefor stock of said company of equal value, and that a committee consisting of Directors Edward C. Smith and George A. Smith be appointed to act jointly with a committee of three shareholders of the Lewiston National Bank, to wit: Frank W. Kettenbach, J. Alexander and J. B. Morris, to supervise the exchange of said stock, examine and approve the securities of both banks, and approve the correct valuation of the assets of each bank for the purpose of this exchange, and that we recommend that all shareholders of this company turn in their stock to said committee, with authority to make said exchange.

Q. Now, is there anything else in that minute-book relative to that transaction at this meeting?

A. No, sir, I believe not. I think not, Mr. Gordon, except that there is a similar move there by the stockholders.

Q. When was that meeting?

(Testimony of Edward C. Smith.)

A. I have got that right here.

Q. Well, find out—but, first, read who the minutes of that meeting are signed by. [1688—1358]

A. They are signed by Frank W. Kettenbach, President, and Edward C. Smith, Secretary.

Q. Now, is there a similar resolution passed by the stockholders of the Idaho Trust Company?

A. Yes, something similar to it.

Q. And what is the date of that?

A. July 8th.

Q. July 8th? A. Yes, sir.

Mr. BABB.—Q. And the year?

WITNESS.—1907.

Mr. GORDON.—Q. Now read that.

A. That portion that just applies to the resolution?

Q. Yes—read who was present.

A. (Reading:) Minutes of the stockholders of Idaho Trust Company, pursuant to regular notice published in the Lewiston Tribune, met at the office of the company on July 8th, 1907, at ten o'clock A. M.

The following stockholders were present: Frank W. Kettenbach, O. A. Kjos, Edward C. Smith, William A. Libert, George A. Smith, A. Freidenrich and Sarah J. Simpson, by Edward C. Smith, proxy.

Upon roll call the following shares of stock were represented: Do you want me to go through all this?

Q. Yes.

WITNESS.—(Reading:)

(Testimony of Edward C. Smith.)

Frank W. Kettenbach.....483 shares.

O. A. Kjos.....160

Edward C. Smith.....220

William A. Libert..... 50

George A. Smith.....133

A. Freidenrich.....120

[1689—1359]

Sarah J. Simpson, by Edward C. Smith, proxy,
293.

Q. Now, may I interrupt you there, and ask you,
is that the stock of the Idaho Trust Company that is
represented?

A. Yes. These are the minutes of the Idaho Trust
Company.

Q. Yes, and that was the stock of the Idaho Trust
Company that was represented? A. Yes, sir.

Q. Now, how many shares of stock was there there
at that time? A. There was 2,000 shares.

Q. At that time? A. Yes, sir.

Q. Now, proceed to read.

A. Well, the total of those that I have read is 1459
shares. (Reading:) “The minutes of the meeting
of July 2, 1906, were read and upon motion were ap-
proved.” Now, do you want me to read the rest of
this down to where I come to that point?

Q. Yes.

A. (Reading:) “The following resolution was
read by the President:

BE IT RESOLVED, by the stockholders of the
Idaho Trust Company, at the annual meeting
thereof, duly called and convened and now in session

(Testimony of Edward C. Smith.)

on the 8th day of July, 1907, at its office in Lewiston, Nez Perce County, State of Idaho, that it is the desire of this corporation to exercise any and all additional powers and privileges granted by an act of the legislature of the State of Idaho, known as Senate Bill No. 93, Substitute Bill No. 13, approved March 10th, 1907, Laws of Idaho 1907, pages 545 to 547, and that this corporation do and it hereby does adopt all of the provisions of the said act of the legislature last mentioned, and that the Secretary be and he hereby is authorized to certify a copy of this resolution and cause the same to be filed with the Recorder of Nez Perce County, Idaho, and a copy thereof after being so filed certified by said County Recorder, to be filed with the Secretary [1690—1360] of State of the State of Idaho, and another copy thereof to be certified by said County Recorder and filed with the Bank Commissioner of the State of Idaho.

Thereupon, on motion of George A. Smith, seconded by William A. Libert and put to vote and carried unanimously, the above resolution was adopted.

The President laid before the meeting a Report of the President and Secretary of earnings--''

Mr. GORDON.—I don't care about that.

WITNESS.—Well, do you want to get down to your other dope here? There is the statement of the corporation there as to the earnings and expenses.

Mr. GORDON.—Well, I don't care about the expenses. Now, by whom were those resolutions signed?

A. Frank W. Kettenbach, President, and Edward C. Smith, Secretary. There is a resolution on that

(Testimony of Edward C. Smith.)

consolidation, if you want it.

Q. Now, read that. That is at the same meeting?

A. Yes. (Reading:) "Upon motion of O. A. Kjos, seconded, put to vote and carried, the following resolution was adopted:

"WHEREAS, a number of shareholders of the Idaho Trust Company are shareholders in the Lewiston National Bank, and the public would consider the credit of one institution affected the credit of the other, the greater economy of operation can be obtained by consolidation of the two institutions, Therefore,

"BE IT RESOLVED, That the consolidation of the stock interests of the two institutions be recommended, and that the officers of the Idaho Trust Company endeavor to arrange a plan by which said consolidation can be brought about."

Q. Is that all? A. That is all.

Q. And that is the end of the resolution which you say was signed by Frank W. Kettenbach and Edward C. Smith? [1691—1361]

A. Well, it goes on here. That is practically all. It says, "No further business appearing—"

Q. Well, I say, that is the one that was signed by Frank W. Kettenbach, President, and Edward C. Smith, Secretary? A. Yes, sir.

Q. Now, was there an annual meeting at that time? Was that an annual meeting?

A. Yes, sir; that was the regular annual meeting.

Q. Now, were the officers and directors elected at that time?

(Testimony of Edward C. Smith.)

A. The directors were elected at the stockholders' meeting. The officers, of course, were elected at a directors' meeting following.

Q. Now, at that meeting who were the directors who were elected?

A. Frank W. Kettenbach, O. A. Kjos, George A. Smith, Edward C. Smith, and A. Freidenrich.

Q. Now, has there been any change in the Board of Directors between that date and the first of July, 1909?

A. Well, here is the minutes of July 6th, 1909, an adjourned meeting.

Q. Well, now— A. These are the same.

Q. The same directors? A. Yes.

Q. And they were re-elected at the meeting of July 6th, 1909? A. Yes, sir.

Q. Now, have they been re-elected successively from the meeting of July 8th, 1907? A. Yes, sir.

Q. There was just one meeting in between that, was there not? A. Yes, sir.

Q. Now, who are the directors of the Idaho Trust Company at the present time?

A. Frank W. Kettenbach, O. A. Kjos, William F. Kettenbach, George [1692—1362] A. Smith, and Edward C. Smith.

Q. And is the only difference between the election of 1909 and the last election you read that Mr. William F. Kettenbach has supplanted Mr. O. A. Kjos? A. No—he supplanted Mr. Freidenrich.

Q. O. A. Kjos is still a director? A. Yes, sir.

Q. In 1907, in July, by whom was the stock of the

(Testimony of Edward C. Smith.)

Idaho Trust Company held? I wish you would turn to your book—

A. That would be quite a job to tell you that. I would have to go through the whole book to give you that.

Q. Well, that isn't a very big book.

A. Well, there is a big list of them.

Mr. BABB.—You have over \$140,000.00 set forth in that meeting as being represented there, and perhaps that would save you that much.

Mr. GORDON.—\$145,900.00—that is, July 8th. 1907.

A. Yes. Well, maybe that will help out a little, and I will see if I can figure out the balance.

Q. Now, were there any other large blocks of stock held by any other persons?

A. William F. Kettenbach and Grace K. Pfafflin were the largest.

Q. At that time? A. Yes.

Q. And how much did William F. Kettenbach have at that time? A. 235 shares.

Q. And Grace K. Pfafflin?

A. She had 65 shares.

Q. Who was that?

A. Grace K. Pfafflin. I don't think William F. Kettenbach had 235 shares, either. I had better look that up. (Examines book.) William F. Kettenbach had 130.

Q. That was July 8, 1907? [1693—1363]

A. Yes. Do you want me to work these out?

Q. No, not especially.

(Testimony of Edward C. Smith.)

Mr. BABB.—I think you had better work it out, since you have got part of them.

WITNESS.—Sir?

Mr. BABB.—You had better work out the rest of them.

Mr. GORDON.—Q. How many shares were there?

A. 2,000.

Mr. BABB.—I think there was \$200,000.00. He has only accounted for \$145,900.00.

(The witness examined the stock-book, page by page, and made notes on a piece of paper as he went along.)

Mr. GORDON.—Q. Now read them, please.

A. Do you want me to read these over again?

Q. No—you have read the owners of 1459 shares of stock.

A. William F. Kettenbach,	130.
Grace K. Pfafflin,	65.
Elizabeth White,	60.
W. W. Brown,	20.
C. Weisgerber,	26.
S. Salsberg,	30.

Q. Now, Mr. Salsberg, I will ask you is he a son-in-law of Mr. Frank W. Kettenbach? A. No, sir.

Q. What relation is he to him?

A. Well, he is a son-in-law of Harry Kettenbach.

Q. That is a brother of Frank W. Kettenbach?

A. Yes, sir.

Q. All right.

(Testimony of Edward C. Smith.)

A. M. Glatigny,	40.	[1694—1364]
Frank McGrane,	50.	
S. G. Isaman,	30.	
Amy D. Kettenbach,	8.	
E. L. Alford,	15.	
J. E. Babb,	10.	
Marie Kettenbach,	1.	
Alfred Kettenbach,	1.	
Matthew Scully,	10.	
Mrs. Henrietta Freedman,	20.	
M. Fonzac,	10.	
Elizabeth Kettenbach,	15.	

That makes the 2,000 shares.

Q. Who is this Mr. Alford that you referred to?
What is his business?

A. He is connected with The Tribune.

Q. In what capacity?

A. He is one of the proprietors.

Q. That is a newspaper published in Lewiston,
is it? A. Yes, sir.

Q. And who is Marie Kettenbach?

A. A daughter of Frank W. Kettenbach.

Q. And who is Alfred Kettenbach?

A. A son.

Q. Now, has there been any material change in
the holdings of the stock from that date down to the
present time?

A. It is practically, with the exception of—

Q. With the exception of what?

A. That the stock has been split in two, most of
that—well, everybody has got just half the stock

(Testimony of Edward C. Smith.)

they had before.

Q. Well, how was that condition brought about?

A. By the purchase of the Lewiston National Bank stock; that is, a consolidation with the Lewiston National Bank. [1695—1365]

Q. Well, now, are there any minute entries relative to the consolidation other than you have read?

A. I don't believe there are.

Q. What was the name of that gentleman that you said was a son-in-law of Mr. Harry Kettenbach?

A. Salsberg.

Q. Wasn't he at one time a Director in the Idaho Trust Company? A. No, sir.

Q. Was he a Director in the Lewiston National Bank?

A. No, sir. Well, I won't say he never was.

Q. Well, I am speaking, from your knowledge?

A. Yes, sir.

Q. Of course, I will go into that after a while. Do you remember whether or not at one time he was on a committee to investigate the affairs of the Lewiston National Bank, as a stockholder of the Idaho Trust Company?

A. I don't remember about that, Mr. Gordon.

Q. Well, do you remember at one time there was a joint committee of the Idaho Trust Company and the Lewiston National Bank appointed for the purpose of going over the books of the Lewiston National Bank?

A. There was an examination, yes, sir.

Q. And wasn't Mr. Salsberg a member of that committee?

(Testimony of Edward C. Smith.)

A. Well, he might have been. I don't remember it.

Q. You don't remember it, do you?

A. No, sir. I rather think he was.

Q. Now, have you any record in the books of the Idaho Trust Company showing the purchase of the stock of the Lewiston National Bank, and how that transaction occurred?

A. I have where it was entered up.

Q. Will you give us the date of that, and from what book of the Idaho Trust Company you read it?

A. I have here the ledger—the general ledger of the Idaho [1696—1366] Trust Company, January 11th, 1908.

Q. And what do you find there?

A. I find that 900 shares of the Lewiston National Bank stock was charged up—was entered up in our bonds—what we call the Bond and Warrant Account.

Q. The Bond and Warrant Account?

A. Yes. That's where we carried an item of that kind.

Q. Now, wasn't there anything done between those two dates, between July 8th, relative to this consolidation and this entry you have read of January 11th, 1908, relative to the consolidation?

A. Well, we were working on it all the time. I don't remember that there was anything actually closed until that date. Of course, the stock might not have issued on that identical date, you know.

Q. Now, is there anything that shows the issuance

(Testimony of Edward C. Smith.)

of the stock to these stockholders of the Lewiston National Bank?

A. Yes, sir,—that stock-book there.

Q. Now, will you show how the stock was issued, and to whom it was issued?

A. Well, that is a big undertaking.

Mr. BABB.—Wasn't there a report came in to some board meeting or some stockholders' meeting that will give us an idea of what was done?

WITNESS.—I don't know as to that.

Mr. BABB.—Take it at that January meeting: Was there a January meeting there where that was closed up—the next meeting afterwards?

WITNESS.—There might have been. I will see.

Mr. GORDON.—Q. Well, was this transfer made all at once, or was it when you would get some man who would agree to transfer his stock under those conditions?

A. Oh, I think it was practically at one time. We arranged with the stockholders before we did anything. There wasn't any stockholders objected to it. [1697—1367]

Q. Now, you purchased, or transferred—I will say you purchased 900 shares of the Lewiston National Bank stock, and gave in exchange for that 900 shares of Lewiston National Bank stock, 900 shares of Idaho Trust Company stock; is that correct? A. Yes, sir.

Q. Well, now, where did you get the 900 shares of Idaho Trust Company stock that you gave for the 900 shares of Lewiston National Bank stock?

(Testimony of Edward C. Smith.)

A. From the stockholders.

Q. Now, what stockholders?

A. The stockholders of the Idaho Trust Company.

Q. Now, how was that apportioned?

A. Well, they split their stock in two.

Q. Did you split your stock in two, or did you double your stock?

(No answer.)

Q. Did you increase your stock?

A. No—we split it in two.

Q. Now, you have here Frank W. Kettenbach, 483 shares of stock; is that correct?

A. Why, I presume so—whatever figures I gave you there.

Q. Now, did he get a half of that?—

A. Yes, sir.

Q. —number of shares of stock—

A. Yes.

Q. —in the Lewiston National Bank?

A. No; no. No. No, sir; he didn't get any of the Lewiston National Bank stock at all. He took half of the Idaho Trust Company stock. He relinquished one-half of his stock.

Q. Well, did he own any Lewiston National Bank stock then?

A. No. Oh, well, he did some.

Q. I mean through this transaction?

A. No, sir. [1698—1368]

Q. Now, please explain to me how that was done, will you? Does your books show how that was done?

(Testimony of Edward C. Smith.)

A. Why, I have just explained it to you.

Q. Now, just tell how it was done.

A. The Lewiston National Bank stockholders surrendered all their stock, and transferred it over to the Idaho Trust Company, and it went into the assets of the Idaho Trust Company. That doubled the value of the Idaho Trust Company stock. Instead of being worth \$100.00 it was worth \$200.00 a share. Say Mr. Kettenbach, the one you are speaking about there, by his splitting his stock in two, taking one-half of what he had before, it would be worth the same amount of money as it was before, because it was worth \$200.00 per share where it was worth \$100 before; and the rest of it went to the stockholders of the Lewiston National.

Q. Yes; but now he still holds on the books of the Idaho Trust Company 483 shares of stock?

A. Why, whatever the ledger calls for.

Q. Well, that is the account you read.

A. Well, that is what it is, I guess.

Q. Then he didn't surrender any of his stock, did he? A. The Idaho Trust Company stock?

Q. Yes. A. Yes, he did; of course, he did.

Q. He had 483 shares in the beginning, didn't he?

A. Let me get my—

Q. Please answer that, will you?

A. Well, I will have to look here before I answer your question.

Mr. BABB.—Some people acquired more stock at the time, instead of surrendering it, I know. I did.

WITNESS.—Well, now, in Mr. Kettenbach's

(Testimony of Edward C. Smith.)

case, he didn't. He held some stock there in trust that wasn't surrendered; but he surrendered 193 shares. [1699—1369]

Mr. GORDON.—Q. Well, then, he didn't have 483 shares, did he?

A. He had before the consolidation, yes.

Q. He had before the consolidation? Well, I asked you to give me the number of shares held by each shareholder on July 8th, 1907, and you gave it, and I asked you if there had been any change between that time and the present time, and you said no. Now, if there has been any change I want to know what it is.

Mr. BABB.—Well, he explained that. He said there was not much change in the personnel, but he said there was a change in the amount of their holdings.

Mr. GORDON.—Q. Now, explain that.

A. What Mr. Babb has said there covers the question. There is practically no change in the individuals, but there is a change in the holdings.

Q. Well, I want to know what the change in the holdings is. I want to know who holds the stock, and how much each stockholder owns of that.

A. Now?—

Q. I want to know from July 8th, 1907, down to the present time, yes?

A. Well, I had better make another list of it, then, —a list of the present date.

Q. Well, I want to know the changes as they occurred right along; that is what I want to know.

(Testimony of Edward C. Smith.)

Mr. BABB.—I object to that as immaterial and irrelevant.

WITNESS.—Well,—

Mr. BABB.—This is simply a fishing expedition, where there are no fish.

Mr. GORDON.—Well, I am entitled to all the fish I can get.

Q. Let me ask you this, Mr. Smith: When the transfer was completed [1700—1370] how did the stock stand? A. It stood—

Q. January 11th, 1908?

A. It stood, with the exception of Mr. Kettenbach there, every stockholder in the Idaho Trust Company had one-half of the stock he had before. It was split in two.

Q. Well, in number of shares, did he have only half the number of shares? A. Yes, sir.

Q. Or in value?

A. No—in number of shares. He had just one-half as many shares. A man that had one share before had just one-half of a share afterwards.

Q. Now, does that show on your books?

A. Yes, sir, with every individual.

Q. Now, can you tell from your books how the stock was held on January 11th, 1908?

A. Yes. Yes, sir—practically one-half of them—

Q. Well, I don't want to know "practically" what your books show; I want to know exactly what they show.

A. All right, sir; I will give it to you.

(Testimony of Edward C. Smith.)

Mr. BABB.—We object to that as immaterial and irrelevant.

WITNESS.—January 11th, 1908; is that what you want?

Mr. GORDON.—I think that is the date you gave when the consolidation was completed.

(The witness examined the stock-book, and made notations therefrom.)

Mr. GORDON.—Q. Now, as I understand, Mr. Smith, the Idaho Trust Company bought how many shares of stock of the Lewiston National Bank?

A. 900, I believe.

Q. Was it 900, or 910? [1701—1371]

A. Well, it was 900, and they bought ten shares afterwards.

Q. Now, did they exchange 900 shares of Idaho Trust Company stock for that 900 shares of Lewiston National Bank stock? A. Yes, sir.

Q. And—

A. That is, that's what it resulted in. It wasn't exactly a straight exchange; that is, it was the stockholders.

Q. Now, what did the Lewiston National Bank stockholders get for their stock?

A. 900 shares of Idaho Trust Company stock.

Q. Now, that 900 shares of Lewiston National Bank stock went into the Idaho Trust Company assets; is that correct? A. Yes.

Q. And the stockholders of the Idaho Trust Company put up 900 shares of stock to purchase that Lewiston National Bank stock, did they not?

(Testimony of Edward C. Smith.)

A. Yes.

Q. Now, how was that apportioned?

A. The Lewiston National Bank stockholders got one share of Idaho Trust Company stock for every share that they owned in the Lewiston National.

Q. I understand that.

A. Apportioned? Maybe I don't understand you?

Q. Well, if the Idaho Trust Company has issued 2,000 shares of stock,— A. Yes, sir.

Q. —the Idaho Trust Company doesn't own those 2,000 shares of stock? A. No.

Q. The stockholders own them? A. Yes, sir.

Q. Now, there is 900 shares of stock of the Lewiston National [1702—1372] Bank purchased; is that correct?

A. Well, I don't know whether you would call it "purchased" or not; it was put into the assets of the Idaho Trust Company.

Q. Well, how did they get it? The people didn't give it to them, did they?

A. Well, it was purchased by reason of this agreement with the stockholders. The stockholders of the Idaho Trust Company agreed to release one-half of their stock upon putting the Lewiston National Bank stock into the assets of the Idaho Trust Company.

Q. Yes. Now, did they release more than 900 shares of Idaho Trust Company stock to the company? A. More?

Q. Well, I mean of their holdings? The stockholders of the Idaho Trust Company, did they re-

(Testimony of Edward C. Smith.)

lease half of their stock to the Idaho Trust Company? Did they turn it into the company?

A. Well, I hardly know how to answer that question. The stock was surrendered, and re-issued—to be re-issued; that is, where it was necessary. It wasn't all surrendered; there was only enough of the Idaho Trust Company stock surrendered—that is, one-half of it.

Q. I may be very dense; but I can't quite understand. You read here that Mr. Frank W. Kettenbach owned 483 shares of stock—is that correct—in the Idaho Trust Company? A. I think so.

Q. Now, the Idaho Trust Company didn't own any stock of itself, did it? All of these shares of stock had been subscribed, had they not?

A. I believe so.

Q. Now, the Idaho Trust Company, as a company, wants to purchase 900 shares of Lewiston National Bank stock; that's correct, isn't it? A. Yes.

Q. And they have got to get something to purchase it with, haven't they, if they are going to give shares of stock for it? Is that correct? [1703—1373]

Q. Now, the Idaho Trust Company has got to get some of its stock back, or it has got to issue more stock, hasn't it, to get that? Is that correct?

A. Well, no, sir.

Q. Well, it can't issue stock without it has some stock to issue, can it?

A. The stockholders surrendered one-half of their stock.

Q. Well, I understand that; but now tell me, who

(Testimony of Edward C. Smith.)

surrendered half of their stock? Just name the people that surrendered their stock.

A. Well, the stockholders—the Idaho Trust Company stockholders.

Q. How is that?

A. The Idaho Trust Company stockholders.

Q. Well, name the stockholders that surrendered their stock, and how much each stockholder surrendered, of the Idaho Trust Company.

A. Well, in order to do that I will have to go all over this again.

Q. Isn't that what you have been working on?

A. Yes; but I didn't complete it.

Q. You have got there 1849 shares? (Referring to statement compiled by witness.) A. Yes, sir.

Q. Well, didn't you need only 900 shares?

A. No, I needed 2,000.

Q. Weren't you going to issue only one share of Idaho Trust Company stock for one share of Lewiston National Bank stock?

A. Oh, well, I have got this thing—this thing isn't right, here. This is dead sure wrong. There is a mistake there somewhere, because there is only—Well, here, I'll tell you—

Mr. BABB.—It seems to me you would have to give the witness time [1704—1374] to make up a statement. He can't do that here. He would have to have time.

WITNESS.—What I was making here is a total list of all the stockholders after the consolidation.

Mr. GORDON.—Now, I would appreciate it very

(Testimony of Edward C. Smith.)

much, if it is not inflicting too much of a task upon you, if you will before noon to-morrow prepare a list showing which of the stockholders of the Idaho Trust Company surrendered their stock to the company, how much each stockholder surrendered, for the purchase of the 900 shares of the Lewiston National Bank stock, and to whom those 900 shares of Idaho Trust Company stock was issued to pay for that Lewiston National Bank stock.

A. Well, you see, I wasn't working on that at all; I was working on the wrong proposition.

Q. Well, that is what I wanted.

A. Well, I was working on the wrong thing altogether.

Q. Have you with you, Mr. Smith, the agreement made between certain of the defendants and the Idaho Trust Company as security for money that is referred to in the answer of the Idaho Trust Company in these proceedings that we are now trying?

A. Yes, sir.

Q. May I see it, please?

A. Do you want the agreement?

Q. Yes.

A. There is one of them, and here is the other—there are two. (Handing documents to Mr. Gordon.)

Q. Now, did you know anything about this agreement, Mr. Smith, or take any part in the making of it? A. Well, I signed it as one of the officers.

Q. You signed it as Secretary; but did you have anything to do with the conducting of these negotia-

(Testimony of Edward C. Smith.)

tions relative to this agreement?

A. No, sir, I don't believe I did.

Q. By whom were the negotiations conducted?—

By Mr. William F. [1705—1375] Kettenbach, George H. Kester and Frank W. Kettenbach?

A. Yes.

Q. And do you remember the date of the execution of the agreement? A. No, I can't remember it.

Q. It is dated—

A. —1907, I guess, isn't it?

Q. 1907. The instrument is dated July 23d, 1907, and it is acknowledged July 31st, 1907; and did you sign that at about the date of the making of this instrument?

A. Well, I suppose so. I believe I signed it—that refers to those dates—I signed it some time between the date of it and when it was acknowledged. I certainly signed it some time between the 23d day of July, 1907, and the 31st day of July, 1907.

Q. What is this Certificate of Incorporation which you have here?

A. Oh, that is a certificate that we got from the Secretary of State.

Q. Now, is that the signature of William F. Kettenbach to that instrument? A. Yes, sir.

Q. And the signature of George H. Kester?

A. Yes, sir.

Q. And is that the signature of the Idaho Trust Company? A. Yes, sir.

Q. And I understood you to say it was executed on or about the date that it bears? A. Yes, sir.

(Testimony of Edward C. Smith.)

Mr. GORDON (to Mr. BABB).—I don't want to take this, but are you going to put this in evidence?

Mr. BABB.—Why, I have alleged it in my answer.

Mr. GORDON.—Well, that doesn't answer my question.

Mr. BABB.—Well, I haven't determined yet what I will put in evidence. [1706—1376] I haven't checked it up.

Mr. GORDON.—Well, I don't want to offer in evidence your paper myself; but if you are not going to offer it in evidence, I will.

Mr. BABB.—Well, we don't want to relinquish the instrument, but we are willing that you should have a copy of it. It is our security. That is the original document. I have no objection to it going in.

Mr. GORDON.—Q. Have you the notes referred to in this agreement between William F. Kettenbach and George H. Kester and the Idaho Trust Company, dated July 23d, 1907? A. No, sir.

Q. Where are they?

A. Well, I don't know where they are; they have been cancelled and renewed; I have got the renewals of what we had.

Q. Will you let me see them, please?

(The witness handed three notes to Mr. Gordon.)

A. William F. Kettenbach—I have a note here of his; but he paid up all his indebtedness under that trust.

Q. All of Mr. Kettenbach's indebtedness?

A. —has all been paid in full under that trust;

(Testimony of Edward C. Smith.)

that is, what notes are listed there.

Q. There are no notes listed here. This refers to any notes that have been given or may hereafter be given. A. Well, at any rate, he had some notes.

Q. And they have all been paid?

A. They have all been paid in full, yes, sir.

Q. Now, will your books show what notes were given by Mr. George H. Kester to the Idaho Trust Company, or what notes this agreement refers to?

A. I think it is listed in the agreement.

Mr. BABB.—I think not. That is a general form contract. [1707—1377]

Mr. GORDON.—Q. Now, will your books show what notes were held by the Idaho Trust Company at that time of George H. Kester's? A. Yes, sir.

Q. Will you turn to them?

A. Oh, I can't turn to those here. I will have to refer to our Note Register.

Q. Your what? A. Note Register.

Q. Now, the three notes that you have presented here are one dated June 30, 1910, on demand, for \$20,000.00, signed George H. Kester; and one for \$10,865.50, of the same date, signed by George H. Kester, payable on demand; and another one of the same date in the sum of \$20,000.00, signed George H. Kester, and payable on demand; all of said notes payable to the order of the Idaho Trust Company. Now, as I say, will your register show the notes that these notes were given in renewal of? A. Yes, sir.

Q. Those three notes that I have just referred to were all signed by George H. Kester, were they not?

(Testimony of Edward C. Smith.)

A. Yes, sir, that is his signature.

Q. And delivered to the Idaho Trust Company?

A. Yes, sir.

Mr. GORDON.—I offer in evidence and read into the record the three notes:

\$20,000.00. Lewiston, Idaho, June 30, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Twenty Thousand & 00/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of eight per cent. per annum until paid, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said [1708—1378] suit, and that such sum may be recovered therein.

No. 5756.

GEO. H. KESTER.

\$20,000.00. Lewiston, Idaho, June 30, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Twenty Thousand & 00/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of eight per cent. per annum until paid, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

No. 5755.

GEO. H. KESTER.

(Testimony of Edward C. Smith.)

\$10,865.50. Lewiston, Idaho, June 30, 1910.

On demand, after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Ten Thousand Eight Hundred Sixty-five & 50/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of eight per cent. per annum until paid, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

No. 5757.

GEO. H. KESTER.

Mr. GORDON.—Q. Have you any recollection of whether the notes that these were given in renewal of were demand notes?

A. My opinion is that they were, yes. [1709—1379]

Q. Well, what was the object in having renewals of demand notes, Mr. Smith?

A. Every six months we make it a practice, or as often as every six months we make it a practice of collecting in our interest, and usually taking new notes, and keeping our paper in better shape. It looks better.

Q. Now, did you have anything to do with the original transaction of the notes that were taken; or was that conducted by Mr. Frank W. Kettenbach?

A. That was conducted by Frank W. Kettenbach.

Q. With Mr. Kester and Mr. William F. Kettenbach?

A. Yes, sir.

(Testimony of Edward C. Smith.)

Q. Now, you spoke of some other agreement that you had?

A. Well, there is one there. (Handing another document to Mr. Gordon.)

Q. Now, this is an agreement made by and between William Dwyer and wife Kittie E., of the first part, with the Idaho Trust Company, of the second part, and dated December 31st, 1908. Now, I notice that this is signed by William Dwyer and Kittie E. Dwyer, and the Idaho Trust Company, by Frank W. Kettenbach, President, and Edward C. Smith, Secretary. Are those the signatures of William Dwyer and Kittie E. Dwyer? A. Yes, sir.

Q. And that is the signature of Frank W. Kettenbach? A. Yes, sir.

Q. And of Edward C. Smith? A. Yes, sir.

Q. Now, did you have anything to do with the negotiations of this agreement?

A. No, sir; I believe Mr. Kettenbach—

Q. —transacted it, and you signed it just as an officer of the corporation? A. Yes, sir. [1710—1380]

Q. You knew nothing about it until the negotiations were all completed, and you were called in to sign it as Secretary?

A. Oh, I might have known it, of course—I might have known about it.

Q. Well, do you have any distinct recollection about it? A. No, I haven't.

Q. Now, where are the notes that this agreement that you have just identified refers to?

(Testimony of Edward C. Smith.)

A. We haven't the notes—the notes that were made at the time that agreement was made. We have renewals of them, though.

Q. Now, have you those notes here?

A. Yes, sir. (Handing notes to Mr. Gordon.)

Q. Now, the notes that this agreement was given to secure, have they been increased or decreased since that agreement was entered into, or don't you know? A. I think they were increased a little.

Q. Now, these three notes that you have— (Witness exhibited another note to Mr. Gordon.) Well, that is a note of William F. Kettenbach.

A. That don't belong in there at all.

Q. Now, you have a note here that is dated Lewiston, Idaho, February 5, 1910, payable on demand to the order of the Idaho Trust Company, in the sum of \$9,544.71, and signed W. F. Kettenbach?

A. Yes, sir.

Q. Is that one of the notes that you referred to as having been paid?

A. No, sir; that is a new debt that was created at the time of the date it bears.

Q. Well, at the time that—that is, February 5th, 1910? A. Yes, sir.

Q. At the time this note was given he owed nothing, as I understand it, under that original agreement? [1711—1381]

A. Well, I can't say exactly that way. He, however,—I don't know that at that date he had paid up all of them other notes.

Q. Well, this wasn't given in renewal of any of

(Testimony of Edward C. Smith.)

the others? A. No, sir.

Q. Now, can you tell which of these notes of Dwyer's were given in renewal of any other notes?

A. Well, the large one—the larger one.

Q. And do you know when that loan was made—the \$19,683.50? A. When it was originally made?

Q. Yes.

A. No, sir. I don't. He had an indebtedness to the Lewiston National Bank before I knew anything about it.

Q. Now, this note that I hold, dated April 13, 1910, payable on demand to the Idaho Trust Company, in the sum of \$19,683.50, signed William Dwyer and Kittie E. Dwyer; that is the signature of William Dwyer and Kittie E. Dwyer, is it? A. Yes, sir.

Q. And that note was given to the Idaho Trust Company? A. Yes, sir.

Mr. GORDON.—I will ask that that be offered in evidence and read into the record.

Mr. BABB.—All right.

Mr. GORDON.—And I shall then ask that they return it to you.

Mr. BABB.—Well, you can read it right in now.

Mr. GORDON.—All right. (Reading:)

\$19,683.50. Lewiston, Idaho, April 13, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Nineteen Thousand Six Hundred Eighty-three & 50/100 Dollars, in United States Gold Coin, with interest

(Testimony of Edward C. Smith.)

after date in like Gold Coin at the rate of ten per cent. per annum until paid, and if suit be instituted to collect this note or [1712—1382] any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

P. O. City.

WILLIAM DWYER.

No. 5706.

KITTIE E. DWYER.

Mr. GORDON.—Q. Mr. Smith, I show you a note dated April 25, 1910, in the sum of \$480.00, signed William Dwyer. Is that Mr. Dwyer's signature?

A. Yes, sir.

Q. And that was given by Mr. Dwyer, was it?

A. Yes, sir.

Mr. GORDON.—We also offer that note in evidence, which reads as follows:

\$480.00.

Lewiston, Idaho, April 25, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho Four Hundred and Eighty Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of ten per cent. per annum, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

P. O. City.

WILLIAM DWYER.

No. 5720.

No endorsements.

(Testimony of Edward C. Smith.)

Mr. GORDON.—This has nothing to do with the timber transaction at all? A. No.

Q. And this note of \$9,544.71, dated February 5, 1910, signed by William F. Kettenbach, on demand, to the Idaho Trust Company, is not in renewal of any old indebtedness at all? A. No, sir. [1713—1383]

Q. Absolutely a new transaction?

A. Absolutely none at all. I just brought it here for the purpose of having all the notes of his here.

Q. Now, will you bring here to-morrow your Note Register to show all the notes that may be referred to in either of these agreements which you have shown here to-night? A. Yes, sir.

Q. Mr. Smith, are there any resolutions or minute entries of the books of the Idaho Trust Company showing the transactions referred to in the two agreements that you have produced here?

A. This agreement here is copied in detail in the minute-book, but the other is not.

Q. In other words, the William F. Kettenbach agreement is copied—the William F. Kettenbach and George H. Kester agreement is copied in full?

A. Yes, sir.

Q. And the Dwyer agreement isn't?

A. No, sir.

Q. Why wasn't the Dwyer agreement entered into the minutes?

A. I don't know. There was a mistake in not doing it for some reason or other; it hasn't been done.

(Testimony of Edward C. Smith.)

Mr. BABB.—I didn't suppose that either of these were in there.

Mr. GORDON.—Q. Now, is there any resolution of the Idaho Trust Company referring to either of these agreements? A. To this one there is.

Q. What does it say about it? Can you find it?

A. Yes, sir.

Q. I wish you would find it.

A. There it is. (Indicating upon record.)

Q. This agreement is dated July 23d, 1907, and is acknowledged July 31st, 1907, and by resolution of the Board of Directors on September [1714—1384] 9th, 1907, the officers were authorized to accept the trust referred to in that agreement, were they not? A. Yes, sir.

Q. And was there any authorization by the Board of Directors to accept the agreement of Mr. Dwyer and his wife? A. There don't seem to be.

Q. And that was on the responsibility of Mr. Frank W. Kettenbach, was it not?

A. Well, the officers have authority to execute papers of that character.

Q. I understand; but I say, there is no resolution confirming that at all? A. No, sir.

Q. Nothing was done at any of the Directors' meetings relative to it? A. No, sir.

Mr. GORDON.—We offer in evidence the agreement that has been identified by Mr. Smith, dated the 23d day of July, 1907, between William F. Kettenbach and George H. Kester, of the first part, and the Idaho Trust Company, a corporation organized,

etc., of the second part, which reads as follows:
[1715—1385]

[Exhibit No. 72.]

THIS INSTRUMENT, Made in triplicate this 23d day of July, 1907, between William F. Kettenbach and George H. Kester, first parties, and the Idaho Trust Company, a corporation duly organized, and created as such under and in accordance with the laws of the state of Idaho, and which has complied with the requirements of Section 2 of Senate Bill No. 67 of the 6th Session of the Legislature of the state of Idaho, second party,

WITNESSETH: That whereas said first parties have by deed dated the 6th day of July, 1907, conveyed to said second party title to the following real estate owned jointly and equally by said William F. Kettenbach and George H. Kester, and situate in Nez Perce County, state of Idaho, to wit:

North Half of North Half of Section Fourteen (14); Northwest Quarter of Southwest Quarter of Section Fourteen (14); North Half of Southeast and Southeast Quarter of Northeast Quarter of Section Fifteen (15); North Half of Section Twenty-two (22); South Half of Southwest Quarter, Southeast Quarter and South Half of Northeast Quarter of Section Twenty-three (23); South Half of Northeast Quarter and East Half of Southeast Quarter of Section Twenty-six (26); South Half of Northwest Quarter and West Half of Southwest Quarter of Section Twenty-five (25); all in Township Thirty-nine (39), North Range Three (3), East Boise Meridian, containing 1280 acres, more or less.

Southwest Quarter of Northwest Quarter, South Half of Northeast Quarter and Southwest Quarter of Southeast Quarter of Section Nine (9); East Half of Northwest Quarter, Southwest Quarter of Northwest Quarter and South Half of Southwest Quarter of Section Twenty-one (21); North Half of North Half, South Half of Northeast Quarter, East Half of Southeast Quarter, Southwest Quarter of Southeast Quarter and Southwest Quarter of Section Twenty (20); Northeast Quarter, East Half of Southeast Quarter, Southwest Quarter of Southeast Quarter, and South Half of Southwest Quarter of Section Twenty-nine (29); North Half of North Half, Southeast Quarter of Northeast Quarter of Section Thirty-two (32); [1716—1386] Northeast Quarter of Southeast Quarter and Lot Number Eleven (11) of Section Thirty (30); Lot Number One (1) of Section Thirty-one (31); all in Township Thirty-nine (39), North Range Four (4), East Boise Meridian, containing 1520 acres, more or less.

North Half of Southwest Quarter, Southwest Quarter of Southwest Quarter of Section Five (5); Northwest Quarter of Northwest Quarter of Section Eight (8); South Half of Section Seventeen (17); South Half of Section Nineteen (19); North Half of Northeast Quarter of Section Thirty (30); Northeast Quarter and Northeast Quarter of Southeast Quarter of Section Twenty-nine (29); North Half of Southwest Quarter and Northeast Quarter of Section Twenty-eight (28); West Half of Northwest Quarter of Section Twenty-seven (27); all in

Township Thirty-nine (39), North, Range Five (5), East, Boise Meridian, containing 1400 acres, more or less.

The parties hereto define the terms, conditions and trusts upon which said second party shall hold title to said real estate so conveyed as follows, to wit:

First: Second party shall hold the title to said real estate in trust for the said William F. Kettenbach and George H. Kester, their heirs, executors, administrators and assigns, on the terms, conditions, trusts and subject to the following:

Second: Said second party shall have full power and authority to make sales from time to time of said real estate or any portion thereof at such price or prices or upon such terms as shall be designated in writing by said first parties, and may make conveyance of any property so sold by deeds with such conditions and covenants as said second party may deem best.

Third: Said second party is also authorized and empowered to pay all taxes, assessments and other charges which may accrue upon said property at any time, and to keep any improvements which there are now or may hereafter be upon said property insured in such amount and in such company or companies as said second party may deem best, including companies represented by second party or any of its officers, paying [1717—1387] therefor, and charging said first parties with all insurance premiums so paid and to comply with the requirements of all laws and *ordinance* pertaining to said property.

Fourth: Said second party hereby is also empowered to take any and all action which in its judgment may be necessary or proper in the matter of the assessment or collection of any taxes, special assessments or any charges upon said property or any part thereof; and said second party may take any and all other action in connection with said property, or any portion thereof, of any nature whatsoever which it may at any time deem best for the interests of said first parties.

Fifth: Second party shall have reasonable compensation for all services rendered under this instrument. Second party shall be indemnified against any and all liability of any nature whatsoever which it may incur or be subject to in the care and management of said property. Second party shall not be liable for any loss caused by error in judgment.

Sixth: Second party shall have a lien upon said real estate and each and any part thereof and upon the proceeds of all sales thereof, and upon all income therefrom, as security for any and all notes or other indebtedness or renewals thereof now owing or hereafter to become due to the Lewiston National Bank or said second party, and to secure it for all that may become due to it hereunder on account of services rendered or moneys advanced or liability of any nature incurred, with interest on such amounts at the rate of eight per cent per annum from the time of the rendering of such service, incurring of such liability, or the making of such advances, it being understood that any indebtedness of William F. Kettenbach or George H. Kester, re-

spectively, and not jointly, shall be secured by the above mentioned lien upon the undivided half interest in said property owned by the party owing such indebtedness.

Seventh: On the sale and conveyance of any part of the above described property as aforesaid all liens secured by this instrument [1718—1388] shall immediately cease upon the property so sold and conveyed, but shall remain unimpaired for the entire amount secured by this instrument upon the balance of the property and upon the proceeds of any such sales and income from property.

All net proceeds from such sales and income shall be equally paid to said William F. Kettenbach and George H. Kester. Upon payment of any such proceeds of sales or any income from said property to said George H. Kester, William F. Kettenbach or order, all liens upon such proceeds and income secured by this instrument shall immediately cease, but such liens shall remain unimpaired as against the balance of said property undisposed of and as against all income and other proceeds of sales thereof in the hands of said second party.

Eighth: At the request of either William F. Kettenbach or George H. Kester, in writing, the property herein described and all proceeds of sales and income shall be conveyed and paid back equally to said William F. Kettenbach and George H. Kester by the second party and this agreement terminated, provided all amounts due or owing to said Lewiston National Bank or second party hereunder, and all liabilities it may have incurred hereunder

shall have been fully paid, and said second party may at any time on notice to said first parties resign performance of all trust duties imposed by this instrument and shall thereupon, on payment to it, in full, of all sums due or owing to it, and all liabilities incurred by it hereunder, convey all of said property undisposed of to said William F. Kettenbach and George H. Kester, and pay over to them all proceeds of sales and income then on hand.

IN TESTIMONY WHEREOF, the said William F. Kettenbach and George H. Kester have hereunto affixed their hands and seals, and the said second party has caused its name to be set hereunto by its President and Secretary, and its seal affixed, the day and year in this instrument first above written.
[1719—1389]

WILLIAM F. KETTENBACH. [Seal]

GEORGE H. KESTER. [Seal]

IDAHO TRUST COMPANY,

By FRANK W. KETTENBACH,

President.

Witnesses:

FORREST WHITE.

RAY C. HYKE.

Attest: EDWARD C. SMITH,

Secretary.

[Corporate Seal of Idaho Trust Company.]

State of Idaho,

County of Nez Perce,—ss.

On this 31st day of July, 1907, before me, Ray Hyke, a Notary Public in and for said county, personally appeared William F. Kettenbach and George

H. Kester, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal]

RAY C. HYKE,

Notary Public in and for Nez Perce County, State of Idaho, [1720—1390]

State of Idaho,

County of Nez Perce,—ss.

On this 31st day of July, 1907, before me, Ray Hyke, a Notary Public in and for said county, personally appeared Frank W. Kettenbach and Edward C. Smith, known to me to be the President and Secretary, respectively, of the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal]

RAY C. HYKE,

Notary Public in and for Nez Perce County, State of Idaho.

Said document was thereupon marked by the Reporter as Exhibit 72.

Mr. GORDON.—You will waive any further identification of that agreement, will you, gentlemen?

Mr. BABB.—Yes.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—I will ask you if this agreement has ever been recorded, Mr. Smith? A. No, sir.

Mr. BABB.—Is that recorded in the minutes of your meetings there?

WITNESS.—Yes.

Q. It is recorded in full in the minutes of your meetings? A. Yes. [1721—1391]

Mr. GORDON.—It is stipulated by and between the parties in open court that William Dwyer and his wife Kittie E., by a deed dated December 31st, 1908, in consideration of \$1.00, conveyed to the Idaho Trust Company the east half of the southwest quarter and the west half of the southeast quarter of section 20, and the southeast quarter of section 21, in township 39 north, of range 5 east, of Boise meridian, and the southwest quarter of section 20, the southeast quarter of section 30, and the north half of the southwest quarter and the north half of the southeast quarter of section 15, township 38 north, of range 6 east, of Boise meridian, and the southeast quarter of the northwest quarter and the south half of the northeast quarter and the northeast quarter of the southeast quarter of section 15, in township 38 north, of range 5 east, of Boise meridian, containing 960 acres, and that the same was recorded at the request of the Lewiston Abstract Company in the office of the Recorder of Nez Perce County, Idaho, January 4th, 1909, in book 99 of deeds, at page 464.

Mr. BABB.—Subject to objections as to irrelevancy or immateriality if we find that it has nothing to do with it.

Mr. GORDON.—Yes; and you waive any further identification of the deed.

Mr. TANNAHILL.—Yes.

Mr. BABB.—Yes.

Mr. GORDON.—And it is also stipulated by and between the parties in open court that William Dwyer, and Kittie E. Dwyer, his wife, made a deed dated December 31st, 1898, conveying to the Idaho Trust Company, in consideration of \$1.00, the south half of lot 8, in block "X," in Vineland, Asotin County, Washington, according to the recorded plat thereof, except one and one-half acres sold to Thomas Root. The said deed was properly executed and acknowledged, and recorded at the request of the Idaho Trust Company in the office of the Auditor and Recorder of Asotin County, Washington, on the 5th day of January, 1909.

Mr. BABB.—Subject to objections as to immateriality and irrelevancy. [1722—1392]

Mr. GORDON.—We offer in evidence the agreement dated December 31st, 1908, made by and between William Dwyer, of the first part, and the Idaho Trust Company, of the second part, which has been identified by the witness, Mr. Smith, which reads as follows: [1723—1393]

[Exhibit No. 73.]

THIS INSTRUMENT, Made this 31st day of December, 1908, between William Dwyer and Kittie E. Dwyer, his wife, parties of the first part, and IDAHO TRUST COMPANY, a corporation duly organized and created as such under and in accordance with the laws of the State of Idaho, and which has complied with the requirements of Section 2 of Senate Bill No. 67 of the Sixth Session of the Legis-

lature of the State of Idaho.

WITNESSETH, That whereas, said parties of the *first have* by deeds of even date herewith conveyed to said second party the following described real estate, situate in Nez Perce County, State of Idaho, to wit:

The East Half of the Southwest Quarter and West Half of the Southeast Quarter of Section Twenty (20) and the Southeast Quarter of Section Twenty-one (21), in Township Thirty-nine (39) North, of Range Five (5) East of Boise Meridian; the Southwest Quarter of Section Twenty (20), the Southeast Quarter of Section Thirty (30), the North Half of the Southwest Quarter and the North Half of the Southeast Quarter of Section Fifteen (15), in Township Thirty-eight (38) North, of Range Six (6) East of Boise Meridian, and the Southeast Quarter of the Northwest Quarter, the South Half of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Fifteen (15) in Township Thirty-eight (38) North of Range Five (5) East of Boise Meridian, containing in all 960 acres; and

The following described real estate, situate in Asotin County, State of Washington, to wit:

The South Half of Lot Eight (8) in Block "X" in Vineland, Asotin County, Washington, according to the recorded plat thereof, except one and one-half acres sold to Thomas J. Root.

The parties hereto hereby define the terms, conditions and trusts upon which said second party shall hold the title to said real estate so conveyed, as fol-

lows, to wit:

First. Said second party shall hold the title to the said real estate in trust for the said first parties, their heirs, executors, [1724—1394] administrators and assigns.

Second. Said second party shall have full power and authority to make sales from time to time of the property described above or any portion thereof at such price or prices, and upon such terms as shall be designated in writing by said parties of the first part, and may make conveyance of any property so sold by deeds with such conditions and covenants as said second party may deem best.

Third. Said second party may, in order to effect sale of said premises from time to time place the same or such part or parts thereof as to said second party may seem best in the hands of real estate agents or brokers, and may pay such real estate agents or brokers commissions from time to time, not exceeding five per cent.

Fourth. In case of any sales made by second party without the intervention of any broker or real estate agent, said second party shall be entitled to a reasonable compensation for services and expenses in making such sale or sales, not exceeding five per cent.

Fifth. If any abstracts of title are required by the parties of the first part to property sold as herein provided, said second party is authorized to make said abstracts of title, deliver same to purchaser or purchasers, charging us with a reasonable sum for

the services of said second party in making such abstracts.

Sixth. At the request of the first parties the property herein described, or such portion thereof as may not have been sold as herein provided shall be conveyed back to them by the party of the second part and this agreement terminated at any time, provided all amounts due to said party of the second part hereunder or the Lewiston National Bank, shall have been fully paid.

Seventh. Said party of the second part is also authorized and empowered to pay all taxes, assessments and other charges which may accrue upon said property at any time, and to keep any improvements which there are now or may hereafter be upon said property insured in *in* such amount and in such company or companies as said second party [1725—1395] may deem best, paying and charging us *will* all insurance premiums as paid.

Eighth. Said second party hereby is also empowered to take any and all action which, in its judgment, may be necessary or proper in the matter of the assessment or collection of any taxes, special assessments or any charges upon said property or any parts thereof, and said second party may take any and all other action in connection with said property or any portion thereof of any nature whatsoever which it may at any time deem best for our interest, as the owner of the property, and shall have reasonable compensation for all services rendered under this instrument, and shall be indemnified against any and all liability of any nature whatso-

ever which it may incur or be subjected to in the care and management of said property.

Ninth. Said second party shall have a lien upon the said real estate and each and any part thereof, and upon the proceeds of all sales thereof and upon all income therefrom, to secure it for all that may become due to it hereunder on account of services rendered or moneys advanced or liability of any nature incurred, with interest on such amounts at the rate of ten per cent per annum from the time of the rendering of such services or the making of such advances. And also to secure the payment to it or the Lewiston National Bank of the sum of Fourteen Thousand Fifty-six (\$14,056.00) Dollars this day loaned to us by said Lewiston National Bank, together with interest thereon from the date hereof until paid at the rate of ten per cent per annum, payable semi-annually at the office of the second party or said Lewiston National Bank, according to the promissory note of said first parties executed and payable to said Lewiston National Bank in the principal sum of Fourteen Thousand Fifty-six (\$14,056.00) Dollars of even date herewith, or any renewal thereof.

Tenth. Said second party shall also have a lien upon the said real estate and each and every part thereof, and the proceeds of any sales thereof and upon all income therefrom, to secure the payment of [1726—1396] any and all other advances or loans which may be made by the said second party or the Lewiston National Bank to said first parties from time to time and at any time hereafter to an amount

not exceeding in the aggregate, exclusive of said sum of Fourteen Thousand Fifty-six (\$14056.) Dollars, the further sum of Three Thousand (\$3,000.) Dollars, together with interest on all such loans or advances from the time of making thereof from time to time, until paid, at the rate of ten per cent per annum, payable semi-annually.

Eleventh. All sums secured hereby shall be payable in Gold Coin of the United States of America of the present standard of weight and fineness, and at the office of said second party or the Lewiston National Bank, in Lewiston, Idaho.

Twelfth. On the sale and conveyance of any part of the above described property as aforesaid, all liens secured by this instrument shall immediately cease upon the property so sold and conveyed but shall remain for the entire amount secured by this instrument upon the balance of the property unimpaired, and upon the proceeds of any such sales. Upon the payment of any such proceeds of sales or any income from said property, to said first parties or to their order, all lien upon such proceeds and income secured by this instrument shall immediately cease, but the same shall remain unimpaired as against the balance of said property undisposed of, and as against all other income and proceeds of sales thereof in the hands of said second party.

IN TESTIMONY WHEREOF, The said first parties have hereunto affixed their hands and seals, and the second party has caused its name to be set hereto by its President and Secretary and its seal

affixed, the day and year in this instrument first above written.

WILLIAM DWYER.

KITTIE E. DWYER.

IDAHO TRUST COMPANY,

By FRANK W. KETTENBACH,

President.

By EDWARD C. SMITH,

Secretary.

Witnesses:

J. R. TURNBULL.

RAY C. HYKE.

[Corporate Seal of Idaho Trust Company.]

[1727—1397]

State of Idaho,

County of Nez Perce,—ss.

On this 31st day of December, 1908, before me, Ray C. Hyke, a Notary Public in and for said County, personally appeared William Dwyer and Kittie E. Dwyer, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same, and on this 31st day of December, 1908, before me, the officer above described, personally appeared said Kittie E. Dwyer, known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

(Testimony of Edward C. Smith.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] RAY C. HYKE,
Notary Public in and for Nez Perce County, Idaho.
State of Idaho,
County of Nez Perce,—ss.

On this 31st day of December, 1908, before me, Ray C. Hyke, a Notary Public in and for said County, personally appeared Frank W. Kettenbach and Edward C. Smith, known to me to the President and Secretary, respectively, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] RAY C. HYKE,
Notary Public in and for Nez Perce County, Idaho.
[1728—1398]

The Reporter thereupon marked said document as Exhibit 73.

Mr. GORDON.—You will waive any further identification of the document, gentlemen?

Mr. BABB.—Yes.

Mr. TANNAHILL.—Yes.

Mr. BABB.—Q. Does this cover all of the Dwyer indebtedness?

A. Well, it covers—it practically includes it, yes.

Q. How much? A. \$20,000.00.

(Testimony of Edward C. Smith.)

Q. Haven't you got a carbon copy of this?

A. I don't think so.

Mr. GORDON.—Q. This paper which you have identified has never been recorded? A. No, sir.

Q. And this is the one that you say is not referred to in the minutes of the company at all?

A. Yes, sir; it hasn't been recorded in the minutes.

At this time an adjournment was taken until tomorrow morning at ten o'clock A. M. [1729—1399]

On Saturday, the 10th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Offer of Original Note of Clarence W. Robnett.]

Mr. GORDON.—We offer in evidence a note made by George Ray Robinson, dated June 26, 1903, for the sum of \$728.00, due one year after date, bearing interest at the rate of one per cent per month, payable to the order of Clarence W. Robnett, and endorsed "Pay to W. F. Kettenbach without recourse. Clarence W. Robnett."

Mr. TANNAHILL.—The defendants severally waive any further identification of the note or the signature.

Said note was thereupon marked by the Reporter as Exhibit 74.

[Testimony of R. Clyde Beach, for Complainant.]

R. CLYDE BEACH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of R. Clyde Beach.)

Direct Examination.

(By Mr. GORDON.)

Q. Will you please state your full name?

A. My legal name is R. Clyde Beach. I don't part that in the middle only when necessary.

Q. How long have you resided at Lewiston, Mr. Beach? A. Sixteen years.

Q. And you are engaged here in business, are you?

A. Yes, sir.

Q. Are you in any way connected with the Lewiston National Bank? [1730—1400]

A. I am a director.

Q. And how long have you been a director?

A. I don't remember—a good many years.

Q. Well, the last ten years?

A. I believe so, yes.

Q. Continuously? A. Yes.

Q. Who was the president of the bank when you first became a director? A. W. F. Kettenbach.

Q. And that is the William F. Kettenbach who is a defendant in these equity causes? A. Yes, sir.

Q. And who was the cashier?

A. George Kester.

Q. Now, do you remember how long they remained as president and cashier, respectively, or the date that they discontinued their services with the bank?

A. No, I don't remember the dates.

Q. It was some time in July, 1907, was it not?

A. Well, I suppose so, yes.

Q. During their continuance in office, in whose control was the management of the affairs of the

(Testimony of R. Clyde Beach.)

bank? A. In the president and cashier.

Q. And, Mr. Beach, did you know that in the spring of 1907, that Mr. William F. Kettenbach and Mr. George H. Kester and Mr. William Dwyer were tried and convicted in the Federal Court at Moscow, Idaho, on a charge of conspiracy to defraud the Government of its timber lands?

MR. TANNAHILL.—We object to the question on the ground that it is irrelevant, incompetent and immaterial.

MR. GORDON.—That is just a formal objection that goes in the record. Will you answer? [1731—1401] A. Yes, sir.

Q. And shortly thereafter they resigned their respective offices in the bank? Is that correct?

A. Yes, sir. Well, now, did they? I suppose they resigned, or it came about through the consolidation, didn't it?

Q. Why, I don't know. That is what I want to know. They were sentenced on these charges on the 17th of June, 1907, and they resigned between the first of July and the 10th, as I understand it.

A. I would like to explain in this way: that I haven't been a regular attendant at those meetings. I have been away and haven't given, possibly, as much attention to that as other people have, and my memory may be faulty in some of these things. I will get just as close to it as I can.

Q. Well, as far as the real dates are concerned, I will put the record in for that. I just want your general remembrance. Now, to be absolutely fair

(Testimony of R. Clyde Beach.)

about it, you also remember that the three gentlemen I have named were tried on similar charges, or the same charges, in Boise, in February or March last, and were acquitted. You know that, also?

A. Yes, sir.

Q. And that the conviction that was had in the spring of 1907 was later—the conviction and judgment that was had against these gentlemen in the spring of 1907 was later reversed by the Circuit Court of Appeals? A. Yes, sir.

Q. It was pretty generally known in the community that these three gentlemen were being investigated and tried, was it not, Mr. Beach?

A. Yes, sir.

Q. Now, did you ever negotiate a loan for Mr. William F. Kettenbach and Mr. George H. Kester on any of their timber lands? A. No. [1732—1402]

Q. Did you ever attempt to? A. No.

Q. Did you ever have anything to do with them negotiating a loan?

A. No. We negotiated a loan, but—

Q. Well, if you will tell the incident that you refer to?

A. Well, wait. I may have to change that. I can't tell how long ago, possibly two years ago, there was a half section of land up—I don't remember the description—which had to be scripped, and I furnished the money and took a third of the land, which I have title to, and Mr. Kester and Mr. Kettenbach borrowed the balance from me. Now, I suppose I

(Testimony of R. Clyde Beach.)

did negotiate that loan. I made the loan myself.

Q. Well, I haven't reference to that. What I refer to is whether or not you have any recollection of a loan that was made by some Boston bankers—I mean Portland bankers—to Mr. William F. Kettenbach and Mr. George H. Kester, on their timber lands?

A. I have absolutely no recollection of anything of that kind.

Q. And that the bankers became somewhat nervous about it, and came to Lewiston, and you and Mr. Frank W. Kettenbach met those bankers relative to that loan. Do you know anything about that?

A. I have absolutely no recollection of anything of that kind.

Q. You never heard of it?

A. To the best of my recollection it is absolutely new to me. I don't recollect anything of it.

Q. After Mr. William F. Kettenbach and Mr. George H. Kester retired from the Lewiston National Bank, they were immediately succeeded by Mr. Frank W. Kettenbach as the president and Mr. Edward C. Smith as the cashier, were they not?

A. Yes, sir.

Q. And did they also have control of the management of the affairs of that bank as their predecessors had had? A. Yes.

Q. Did you ever become the endorser on a note or any other securities [1733—1403] for Kester and Kettenbach, other than the scrip transaction you have related?

(Testimony of R. Clyde Beach.)

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—To the best of my recollection, I never did.

Mr. GORDON.—Q. And you have no recollection of any loan that Kester and Kettenbach were endeavoring to negotiate outside of Lewiston, that you were called upon to either vouch for the security, or for Kester and Kettenbach or either of them?

Mr. TANNAHILL.—The same objection.

WITNESS.—I can't recall anything at this time.

Mr. GORDON.—Well, that's all.

Mr. TANNAHILL.—That's all. [1734—1404]

**[Testimony of Edward C. Smith, for Complainant
(Recalled).]**

EDWARD C. SMITH, a witness heretofore called in behalf of the complainant, and duly sworn, being recalled in behalf of the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Yesterday evening, Mr. Smith, I asked if you would work out the transaction by which the stock of the Lewiston National Bank was purchased by the Idaho Trust Company. I understood that it was an exchange of Idaho Trust Company stock for Lewiston National Bank stock; and I will appreciate it if you will tell us the shares of stock that were exchanged, and whose stock it was that was exchanged, and who of the stockholders of the Lewiston National Bank received the stock.

(Testimony of Edward C. Smith.)

A. I have here a statement showing the ownership of Idaho Trust Company stock before January 7th, 1908, and also a statement showing the ownership of the same stock after that date, which, I think, covers your question. (Handing same to Mr. Gordon.)

Q. Now, this is headed before January 7th, 1908, and after January 1st, 1908.

A. Well, that ought to be the 7th. I was rushing things this morning. (Making correction.) There, that's it.

Q. And this is what your Stock Register shows, is it?

A. That is all taken from the Stock Register, yes, sir,—the book I had here last night.

Mr. GORDON.—I will ask that that be copied into the record.

Said statement was thereupon marked by the Reporter as Exhibit 75, and the same is in the words and figures following, to wit: [1735—1405]

Plaintiffs' Exhibit No. 75.

PLEASE EXAMINE AND REPORT WITHOUT DELAY.

Lewiston, Idaho, ——— 191——

Stock Ownership

Idaho Trust Company.

In account with Idaho Trust Company.

	Before Jan. 7-08.	On Jan. 7-08.
Frank W. Kettenbach	483	396½
Sarah J. Simpson	293	146½
Edward C. Smith	220	110

1950 *The United States of America*

A. Freidenrich	120	75
Geo. A. Smith	133	66½
William F. Kettenbach	130	235
Elizabeth White	60	75
Grace K. Pfafflin	65	322½
O. A. Kjos	160	80
W. W. Brown	20	10
C. Weisgerber	26	23
S. Salsberg	30	15
M. Glatigny	40	20
Frank McGrane	50	25
S. G. Isaman	30	15
Amy D. Kettenbach	8	4
E. L. Alford	15	7½
Jas. E. Babb	10	5
Marie Kettenbach	1	
Alfred D. Kettenbach	1	
Matthew Scully	10	5
Wm. A. Libert	50	75
Mrs. Henrietta Freedman	20	10
M. Donzac	10	5
Elizabeth Kettenbach	15	7½
R. C. Beach		5
C. C. Bunnell		35
Robert Schleicher		40
Ira Small		20
John B. Hess		5
Harriet F. Morris		15
James Lambert		40
J. Alexander		90
Amy D. Kettenbach, Trustee		1

(Testimony of Edward C. Smith.)

Jo. Richards	2	
J. P. M. Richards	3	
Dora B. Smith	10	
	<hr/>	<hr/>
	2000 Shares	2000 Shares

[1736—1406]

Mr. GORDON.—Q. Now, this list which you have produced and identified, showing the owners of the stock of the Idaho Trust Company on January 7th, 1908, and the owners of that stock after January 7th, 1908, and the number of shares each shareholder held on the respective dates, which has been read into the record and offered in evidence, I will ask you to explain what is meant by the ownership of the stock before January 7th and after January 7th. In other words, I understand that this is a showing that certain shareholders of the Idaho Trust Company, on January 7th, 1908, owned a certain number of shares of stock, and that immediately after that date their shares of stock in the Idaho Trust Company were immediately reduced. Now, what became of the difference in the number of shares of stock that they held January 7th, 1908, and that that they held immediately after that date?

A. I would like to make one little explanation of one little point before I answer that question. That shows “after.” That should be “on January 7th, 1908.”

Q. Well, then change it to “on.”

A. That is what it is—“on.” (Making correction.) In answer to your last question, the totals

(Testimony of Edward C. Smith.)

here you will notice are the same.

Q. Yes.

A. The stock on January 7th—the stock before January 7th, the stock of the Idaho Trust Company was worth \$100.00 per share. On January 7th it was worth \$200.00 per share.

Q. Then, you just increased the—

A. —doubled the value of the stock.

Q. Doubled the value of your capital stock?

A. No, sir—the surplus, which is equivalent to stock.

Q. Well, that increased the value of the stock 100 per cent? A. Yes, sir.

Q. And that occurred on the 7th of January?

A. About—yes. Yes, sir. [1737—1407]

Q. Then, the first name you have here is that, before January 7th, 1908, Frank W. Kettenbach owned 483 shares of the Idaho Trust Company stock, and on January 7th, 1908, he owned 396 shares of stock. Now, what became of the difference in the amount of stock of Frank Kettenbach?

A. You will notice all the way through here—down here, see,—some of these didn't have any Idaho Trust Company stock before. Those are people who had Lewiston National Bank stock before. Some of these stockholders had stock in both institutions before.

Q. Well, now, what did Mr. Frank W. Kettenbach get for the 100 shares of stock that he turned in, to reduce his from 483 to 396½? What did he do with that?

(Testimony of Edward C. Smith.)

A. Well, Mr. Kettenbach had some—the reason was he had a little stock in trust there that belonged to the stockholders, was the reason his wasn't divided up equally. I can't remember exactly the occurrence of that. It was only a small amount, however; but he had Lewiston National Bank stock for a large portion of it.

Q. Well, now, take your own stock. Before January 7th, Edward C. Smith had 220 shares of Idaho Trust Company stock? A. Yes, sir.

Q. On January 7th, 1908, he had just half that amount—110 shares? A. Yes, sir.

Q. Now, what did you do with your other 110 shares?

A. I gave it to—I relinquished it to a stockholder of the Lewiston National Bank.

Q. Well, did you relinquish it to the stockholder, or did you relinquish it to the treasury of the Idaho Trust Company?

A. No; to the stockholder. The stockholder of the Lewiston National Bank got that 110 shares.

Q. You don't know which one got it? You just put into a pool, did you? [1738—1408]

A. Oh, yes; it was all just put into a pool. There it is. It was all just divided up, you know, to the proper ownerships. See down here, you will notice down here a great many of these here are not listed under the Idaho Trust—are not listed under the former ownership. That is caused by their owning Lewiston National Bank stock and not Idaho Trust

(Testimony of Edward C. Smith.)

stock. Some of them are a great deal larger. Now, for—

Q. Miss Grace K. Pfafflin?

A. Yes, there is a very noticeable one. She had 65 shares in the Idaho Trust Company before, and she had 322½ in the Idaho Trust Company afterwards.

Q. Now, was any stock issued to the stockholders of the Lewiston National Bank in lieu of their Lewiston National Bank stock that they relinquished?

A. Not a dollar. The only stock that was held by the Lewiston National Bank stockholders was that that was held by directors.

Q. No—you don't understand me. There was \$100,000.00 worth of stock of the Lewiston National Bank when this transaction occurred; is that correct?

A. Par value, yes—par.

Q. And the Idaho Trust Company consolidated, and in that way 900 shares of the Lewiston National Bank stock became the stock of the Idaho Trust Company? A. Yes.

Q. Now, in lieu of that stock did the Idaho Trust Company issue to the shareholders of the Lewiston National Bank an equal number of shares of Idaho Trust Company stock?

A. The stockholders did it, of the Idaho Trust Company.

Q. The stockholders of the Idaho Trust Company put a certain number of shares of their stock into a pool, and that stock was re-issued to the shareholders of the Lewiston National Bank?

(Testimony of Edward C. Smith.)

A. Yes, sir. [1739—1409]

Q. The stock was actually issued to them?

A. Just as you see it there, yes, sir.

Q. That is Idaho Trust Company stock that was issued?

A. Yes, sir. That is all—that statement is Idaho Trust Company stock only. That is all I intended to make a statement of.

Q. Now, when we were here yesterday evening we were inquiring as to who the holders of the Idaho Trust Company stock were in July and September, 1907. I don't know whether you put that into the record or not; but is that practically the same as what you show here before January, 1908,—the number of shares of each person?

A. Practically, yes. I believe it is identically the same, but it is practically the same.

Q. Mr. Smith, is the stock of the Idaho Trust Company at the present date held by the same stockholders as are set out on this exhibit here that has been offered in evidence?

A. Practically the same; I think there have been some changes.

Q. And have they continued practically the same ever since? A. Practically the same, yes, sir.

Q. With some few changes? There might be one here and there? A. Very few changes.

Q. Now, do you know how much stock Mr. Frank Kettenbach owns to-day? Does he own—

A. Well, I can get it if you will let me go down on the street—

(Testimony of Edward C. Smith.)

Q. Oh, I just want to know practically. Has it been increased? A. It has been increased.

Q. How much? Do you know?

A. Oh, I can't tell you.

Q. Well, 10 shares, or 200 shares?

Mr. BABB.—Oh, I object to questions of that kind.

Mr. GORDON.—Well, let him get the book, then, and we will find out.

WITNESS.—Is there anything else you want besides that stock-book? [1740—1410]

Mr. GORDON.—That is all I know of now.

(The witness retired from the room, and returned in a short time.)

Q. Now, just turn to that and tell me practically what it is.

A. Well, I can give it to you exactly. (Examining book, and making notations therefrom.)

Q. Can you tell the number of shares of stock held by Mr. Frank W. Kettenbach at the present date?

Mr. BABB.—I object to that as immaterial and irrelevant, and I also object to all with reference to which he is inquiring, as being incompetent, irrelevant and immaterial, and entirely outside of the issues of the case, and I move to strike it out.

Mr. GORDON.—Answer the question.

A. 440½.

Q. Mr. Smith, you have known the defendants Kester, Kettenbach and Dwyer for a number of years, have you not? A. Yes, sir.

Q. And you also know, do you not, that they were tried and convicted at Moscow, in the spring of 1907,

(Testimony of Edward C. Smith.)

for conspiracy to defraud the Government of its timber lands?

Mr. BABB.—I object to that as immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And that was very generally known here in Lewiston, was it not?

Mr. BABB.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. You also know that the judgment of conviction had in the spring of 1907 was reversed by the appellate court some time later, do you not? A. Yes, sir.

Q. And that they were subsequently tried on a conspiracy charge [1741—1411] at Boise, in February and March of 1910, and were acquitted?

A. Well, I know practically.

Q. I mean from general talk and general conversation? A. Yes.

Q. Now, I want to put in some of those other notes in evidence that I didn't put in last night that you had here. Now, this note that you produce here, dated February 5, 1910, signed W. F. Kettenbach, and payable on demand to the Idaho Trust Company in the sum of \$9,544.71 is that note in renewal of any other transaction? A. No, sir.

Q. It is an entirely different transaction from the transactions mentioned in the agreement that we introduced here yesterday?

A. Yes, sir. Are these what you want to see? (Exhibiting three notes to Mr. Gordon.)

(Testimony of Edward C. Smith.)

Q. Yes. (The witness handed said notes to Mr. Gordon.)

Q. Have you produced here all of the notes that are held by the Idaho Trust Company of George H. Kester's?

A. All the notes that are in force.

Q. Well, what do you mean by that?

A. Well, all that have not been cancelled.

Q. And of William Dwyer and Kittie E. Dwyer?

A. Yes, sir.

Q. And of William F. Kettenbach?

A. Yes, sir.

Q. Or any of them jointly—Kester and Kettenbach? A. No, sir.

Q. You haven't any? A. I haven't any.

Q. Except what you have produced here?

A. Yes, sir.

Q. You say "I"—you mean the Idaho Trust Company? A. Yes. [1742—1412]

[Stipulation as to Lewiston National Bank.]

Mr. GORDON.—It is stipulated by and between the parties hereto in open court that the Lewiston National Bank, at Lewiston, Idaho, was incorporated under the laws of the United States relating to national banks May 23, 1883, for a period of twenty years, with a capital stock of \$50,000.00; that said Articles of Incorporation were renewed May 23, 1903, for a further period of twenty years; that the original officers of the Lewiston National Bank were John Braerley, president, Jasper Rand, vice-president, Nelson W. Braerley, cashier, William F. Ket-

tenbach, assistant cashier; that the directors of said bank for the year 1900 were:

	Number of Shares.
C. C. Bunnell.....	30
J. Alexander, V. P.....	20
B. F. Morris.....	10
W. F. Kettenbach, Pres't.....	215
Grace K. Pfafflin.....	195
Elizabeth White	20
Geo. H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1901 were:

C. C. Bunnell.....	30
J. Alexander, V. P.....	20
B. F. Morris.....	10
R. C. Beach.....	10
Grace K. Pfafflin.....	195
W. F. Kettenbach, Pres't.....	205
Geo. H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names. [1743—1413]

That the directors of said banking institution for the year 1902 were :

W. F. Kettenbach, President.....	205
Grace K. Pfafflin.....	195
C. C. Bunnell.....	30
J. Alexander, Vice-President.....	20

B. F. Morris.....	10
R. C. Beach.....	10
George H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1903 were:

W. F. Kettenbach, President.....	195
Grace K. Pfafflin.....	195
C. C. Bunnell.....	30
J. Alexander, Vice-President.....	20
J. B. Morris.....	10
R. C. Beach.....	10
George H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1904 were:

W. F. Kettenbach, President.....	195
Grace K. Pfafflin.....	195
J. Alexander, V. P.....	20
C. C. Bunnell.....	30
J. B. Morris.....	10
R. C. Beach.....	10
George H. Kester, Cashier.....	10

[1744—1414]

and the number of shares of stock held by each director was the number set out opposite their respective names.

That on January 12, 1905, the capital stock of said

bank was increased to \$100,000.00, and a dividend of 100 per cent was declared, to enable the stockholders to take new issue of stock; that the number of directors was increased from seven to eleven. Owing to the uncertainty of the status of the new stockholders to become directors, no election was held, and the old directors held over. That on February 6, 1905, additional directors were elected as follows: O. E. Guernsey, with 20 shares of stock, George H. Storer, with 15 shares of stock, Lester M. Coffin, with 10 shares of stock, and William A. Libert, with 50 shares of stock.

That the directors for the year 1906 were:

W. F. Kettenbach, President.....	285
Grace K. Pfafflin.....	250
J. Alexander, V. P.....	100
C. C. Bunnell.....	45
J. B. Morris.....	10
R. C. Beach.....	15
William A. Libert.....	60
O. E. Guernsey.....	10
John W. Givens.....	28
Aaron Friedenrich.....	25
George H. Kester, Cashier.....	50

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1907 were:

W. F. Kettenbach, President.....	285
Grace K. Pfafflin.....	250

J. Alexander, V. P.....	100
C. C. Bunnell.....	45
J. B. Morris.....	10
William A. Libert.....	60
O. E. Guernsey.....	10
John W. Givens.....	55
Aaron Friedenrich.....	25
R. C. Beach.....	15
George H. Kester, Cashier.....	50

and the number of shares of stock held by each director was the number set out opposite their respective names.

That on July 8th, 1907, William F. Kettenbach resigned as President, and George H. Kester resigned as director and cashier, their resignations to take effect immediately; that C. W. Robnett resigned as bookkeeper, his resignation to take effect August 1st, 1907.

That on July 8th, 1907, Frank W. Kettenbach was elected president of said bank.

That on August 12, 1907, it was resolved to consolidate the stock interests of the Lewiston National Bank and the Idaho Trust Company.

That on July 30, 1907, E. C. Smith was elected a director of the Lewiston National Bank, he holding 10 shares of stock; and on October 8th, 1907, E. C. Smith was elected cashier of the Lewiston National Bank.

That the directors elected for the year 1908 were:

Frank W. Kettenbach, President.....	10
J. Alexander, Vice-President.....	10
Edward C. Smith, Cashier.....	10

William A. Libert	10
O. E. Guernsey	10
J. B. Morris	10
C. C. Bunnell	10
R. C. Beach	10
John W. Givens	10

[1746—1416]

and the number of shares of stock held by each director was the number set out opposite their respective names.

That on January 14th, 1908, a resolution of the board of directors was passed to reduce the number of directors to nine, and J. E. Chapman was elected assistant cashier.

That the directors of said banking institution elected for the year 1909 were:

Frank W. Kettenbach.....	10
O. A. Kjos.....	10
J. Alexander.....	10
William A. Libert.....	10
J. B. Morris.....	10
Edward C. Smith.....	10
R. C. Beach.....	10
John W. Givens.....	10
O. E. Guernsey.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

It is stipulated by and between the parties hereto in open court that the stock of the Lewiston National Bank, in the year 1904, was held by the following named persons, and that the various persons owned

and held the number of shares set out opposite their respective names:

W. F. Kettenbach.....	195	Shares
Grace K. Pfafflin.....	195	“
C. C. Bunnell.....	30	“
J. Alexander.....	20	“
Elizabeth White	20	“
J. B. Morris.....	10	“
B. F. Morris, Est.....	10	“
R. C. Beach.....	10	“
George H. Kester	10	“

[1747—1417]

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1905, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

J. Alexander.....	100	Shares
R. C. Beach.....	15	“
C. C. Bunnell.....	45	“
J. B. Morris.....	10	“
O. E. Guernsey.....	10	“
Albert Leiber.....	5	“
O. F. Frenzel.....	5	“
W. F. Kettenbach.....	285	“
George H. Kester.....	10	“
R. Grostein.....	15	“
I. N. Smith.....	10	“
William A. Libert.....	60	“
Grace K. Pfafflin.....	290	“
Harriet F. Morris.....	15	“

Elizabeth White.....	35	“
M. Donzae.....	25	“
Aaron Frederick.....	25	“
George H. Storer.....	15	“
Julius Kuehn.....	10	“
E. H. Libby.....	15	“

It is further stipulated by and between the parties hereto in open court that the stock of the Lewiston National Bank, in the year 1906, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

W. F. Kettenbach.....285 Shares

[1748—1418]

W. F. Kettenbach, Trustee.....	25	“
Grace K. Pfafflin.....	295	“
George H. Kester.....	40	“
R. C. Beach.....	15	“
J. B. Morris.....	10	“
Harriet Morris.....	35	“
J. Alexander	100	“
C. C. Bunnell.....	45	“
O. E. Guernsey.....	10	“
William A. Libert.....	60	“
Julius Kuehn.....	10	“
John W. Givens.....	55	“
Elizabeth White.....	35	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1907, was held by the following named persons, and that the various persons owned and held the number of shares set out

opposite their respective names:

Grace K. Pfafflin.....	250	Shares
George H. Kester.....	50	“
R. C. Beach.....	15	“
J. B. Morris.....	135	“
Elizabeth White.....	35	“
C. C. Bunnell.....	45	“
Harriet F. Morris.....	15	“
A. Freidenrich.....	25	“
I. N. Smith.....	10	“
E. H. Libby.....	15	“
W. A. Libert.....	60	“
W. F. Kettenbach.....	170	“
J. Alexander.....	100	“

[1749—1419]

O. E. Guernsey.....	10	“
Julius Keuhn.....	10	“
John W. Givens.....	55	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1908, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

Idaho Trust Company.....	910	Shares
F. W. Kettenbach.....	10	“
J. Alexander.....	10	“
J. B. Morris.....	10	“
J. W. Givens.....	10	“
C. C. Bunnell.....	10	“
O. E. Guernsey.....	10	“
Ed. C. Smith.....	10	“

R. C. Beach.....	10	“
Wm. A. Libert.....	10	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1909, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

Idaho Trust Company.....	910	Shares
F. W. Kettenbach.....	10	“
E. C. Smith.....	10	“
O. E. Guernsey.....	10	“
J. B. Morris.....	10	“
R. C. Beach.....	10	“
[1750—1420]		

O. A. Kjos.....	10	“
J. W. Givens.....	10	“
J. Alexander.....	10	“
Wm. A. Libert.....	10	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1910, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

Union Securities Co.....	870	Shares
Wm. Thompson.....	10	“
J. K. McKornack.....	10	“
F. A. Blackwell.....	10	“
T. J. Humbird.....	10	“
O. A. Kjos.....	10	“
J. Alexander.....	10	“

F. W. Kettenbach.....	10	“
E. C. Smith.....	10	“
O. E. Guernsey.....	10	“
R. C. Beach.....	10	“
John W. Givens.....	10	“
Wm. A. Libert.....	10	“
J. B. Morris.....	10	“

It is hereby stipulated by and between the parties hereto, in open court, that with reference to all matters of fact inserted in the record by stipulation, the same having been stipulated occasionally on the assertion of correctness by one party without the other party having had an opportunity to verify it, it is agreed that in case of discovery of mistake by any party of any of the matters so stipulated, [1751—1421] an opportunity shall be afforded for correction upon the record.

[Stipulation as to Recording Instruments in Latah County.]

It is further hereby stipulated and agreed by and between the parties hereto, in open court, that the following instruments were properly executed and acknowledged, and were filed for record in the office of the county recorder of Latah County, State of Idaho and were thereafter recorded in said Latah County, State of Idaho, as follows:

FRED W. SHAEFFER.

Description: E. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 27, T. 40 N., R. 1 W., B. M.

· UNITED STATES

to

FRED W. SHAEFFER.

Receiver's Receipt.

Dated July 25, 1902.

Recorded June 8, 1903, in Book 2, p. 72.

Certificate No. 3795.

FRED W. SHAEFFER, Bachelor,
to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Dated July 26, 1902.

Recorded June 8, 1903, in Book 35 of Deeds, p. 411.

Consideration, \$800.00.

Acknowledged before H. K. Barnett, a Notary Pub-
lic of Nez Perce County, Idaho, July 26, 1902.

UNITED STATES

to

FRED W. SHAEFFER.

Patent.

Dated January 28, 1904.

Recorded March 26, 1904, in Book 31 of Deeds, p. 206.

[1752—1422]

ROWLAND A. LAMBDIN.

Description: SW. $\frac{1}{4}$ Sec. 29, T. 42 N., R. 1 W., B. M.

UNITED STATES

to

ROWLAND A. LAMBDIN.

Receiver's Receipt.

Dated July 22, 1902.

Recorded June 8, 1903, in Book 2, p. 72.

1970 *The United States of America*

ROWLAND A. LAMBDIN, and MARION P., His
Wife,

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Dated July 22, 1902.

Recorded July 8, 1903, in Book 35 of Deeds, p. 402.

Consideration, \$800.00.

Acknowledged before H. K. Barnett, a Notary Pub-
lic of Nez Perce County, Idaho, July 22, 1902.

UNITED STATES

to

ROWLAND A. LAMBDIN.

Patent.

Dated January 28, 1904.

Recorded March 19, 1904, in Book 31 of Deeds, p. 200.

WM. F. KETTENBACH and MARY JANE, His
Wife, and GEORGE H. KESTER, and EDNA
P., His Wife,

to

POTLATCH LUMBER COMPANY, a Corpora-
tion.

Warranty Deed.

Dated June 17, 1903.

Recorded June 18, 1903, in Book 39 of Deeds, p. 99.

Consideration, \$6,000.00.

Acknowledged before H. K. Barnett, a Notary Pub-
lic of Nez Perce County, June 17, 1903.

Conveying the tracts of land described in the Re-

ceiver's Receipt issued to the said Lambdin and the said Shaeffer. [1753—1423]

IVAN R. CORNELL.

Description: Lots 6 and 7, and E. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 27,
T. 40 N., R. 1 W., B. M.

UNITED STATES

to

IVAN R. CORNELL.

Receiver's Receipt.

Dated Sept. 10, 1903.

Recorded Sept. 14, 1903, in Book 2 of Receipts, p. 90.

UNITED STATES

to

IVAN R. CORNELL.

Patent.

Dated Sept. 9, 1904.

Recorded August 15, 1906, in Book 43 of Deeds,
p. 139.

IVAN R. CORNELL, Single,

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Dated Sept. 29, 1903.

Recorded October 10, 1903, in Book 41 of Deeds, p. 28.

Consideration, \$1,000.00.

Acknowledged before Otto Kettenbach, a Notary
Public for Nez Perce County, Idaho, September
29, 1903.

GEORGE H. KESTER and EDNA P. KESTER,
His Wife, and WM. F. KETTENBACH and
MARY JANE, His Wife,
to

POTLATCH LUMBER CO., a Corporation.

Warranty Deed.

Dated August 21, 1906.

Recorded Oct. 9, 1906, in Book 43 of Deeds, p. 139.

Consideration, \$2,200.00.

Acknowledged before John D. McConkey, a Notary
Public for Nez Perce County, Idaho, August 28,
1906. [1754—1424]

Mr. GORDON.—It is hereby stipulated by and
between counsel for the respective parties hereto that
the Potlatch Lumber Company was duly incor-
porated under the laws of the State of Maine, and
the Clearwater Timber Company was duly incor-
porated under the laws of the State of Washington,
and that each of them had fully complied with the
foreign corporation laws of Idaho prior to any con-
veyances to them or either of them shown in the evi-
dence in these cases. [1755—1425]

[Testimony of B. M. Gregory, for Complainant.]

B. M. GREGORY, a witness called on behalf of
the complainant, being first duly sworn, testified as
follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. My name is B. M. Gregory.

Q. And are you employed at the Lewiston Na-

(Testimony of B. M. Gregory.)

tional Bank? A. Yes, sir; I am.

Q. In what capacity? A. I am bookkeeper.

Q. How long have you been with the Lewiston National Bank? A. Since March, 1909.

Q. Have you with you the ledgers of the Lewiston National Bank from 1905?

A. From 1905, I have, beginning with January, 3, 1905; I have two of them, in consecutive order.

Q. Have you the ledgers that will show the account of Kittie E. Dwyer with that institution?

A. I have.

Q. Well, will you turn to that account and show the first item that you find in the ledger that you have referred to, and the date of it?

A. On January 3d, 1905, there is a balance brought forward from the previous ledger of \$243.22 of an overdraft.

Q. Now, will you read right through that account and tell the changes that are made in it, whether they are deposits or checks, and what they are, and the dates on which they occur?

A. Then balance brought forward,—I can't give you the date of it because I don't know what date this was, whether it was the day previous to this, or whether there were holidays here; this is the [1756—1426] balance of the night previous.

Q. Well, what is the next day you find?

A. The first entry in here is on the 3d of January, 1905, a \$10.00 check. The next entry is on the 7th of January, two checks, a total of \$13.40. On January 9th, a \$3.00 check.

(Testimony of B. M. Gregory.)

Q. How does the balance stand,—increasing the overdraft?

A. The balance has been increasing, the overdraft.

Q. Then read the increases or reductions as you come to them.

A. On January 10th, a \$5.00 check, increasing the overdraft to \$274.65. On January 13th, two \$5.00 checks, increasing the overdraft to \$284.62. On January 14th, two checks, a total of \$8.15, increasing the overdraft to \$292.77. On January 18, two checks, totaling \$13.75, increasing the overdraft to \$306.52. On January 23d, a \$5.00 check, increasing the overdraft to \$311.52.

Q. Now, continue through the book and announce the date on which you find a reduction of the overdraft. We don't care about the \$5.00 checks.

A. You don't care for me to read these then? I am just simply to run through until I find a reduction?

Q. Yes.

A. On the 1st day of July, 1905, there is a deposit of \$1,263.00.

Q. Now, up to that period the books show that the overdraft had increased until the 30th of July, when the overdraft— A. The 30th of June.

Q. The 30th of June, when the overdraft was how much? A. \$1,239.88.

Q. And on the following day there was a deposit made of \$1,263.00? A. Yes, sir.

Q. Do you know what that deposit was?

A. I do not. [1757—1427]

(Testimony of B. M. Gregory.)

Q. Now, continue through the account, please. What do you find on July 3d in the account of Kittie E. Dwyer?

A. Two checks increasing a small standing overdraft.

Q. Well, it was an overdraft of how much on the 2d of July, 1905? A. \$11.03.

Q. Now, following the account through till you find a reduction of the overdraft of Kittie E. Dwyer's account, what do you find?

A. On the 2d day of October there was a deposit of \$121.50, which reduced the overdraft from \$1,352.60 to \$1,234.50.

Q. One minute. Then from the last date, which was July 3d, the account of Kittie E. Dwyer increased until on October 2d, it amounted to \$1,352.60?

A. October 1st.

Q. October 1st. And on October 2d a deposit was made to her credit of \$121.50, and that left the overdraft \$1,234.50. Now proceed. What is the next entry you find?

A. Three checks on the 3d of October, increasing the overdraft to \$1,380.23.

Q. Just continue through the account until you find that overdraft reduced.

A. Now, on the 18th—

Q. Of what?

A. October; there is a deposit of \$161.25, which reduced the overdraft from \$1,550.11,—

Q. On the 17th?

A. On the 17th, to \$1,388.86 on the 18th.

(Testimony of B. M. Gregory.)

Q. All right. Just continue through the account and point out any reduction that is made in the overdraft and give date of it.

A. On the 18th of November the overdraft was \$2,141.50. On the 20th of November, 1905, there was a deposit of \$3,450.00, which wiped out the overdraft and left a balance to the credit of Kittie E. Dwyer [1758—1428] of \$1,380.50.

Q. Now, follow that account through, and—

A. This is carried into the other ledger.

Q. You state that the account runs from November 27, 1905, when Mrs. Kittie E. Dwyer had a balance of \$1,202.15, and is reduced by small checks until when? A. December 30, 1905.

Q. What is the balance to her credit then?

A. \$575.50.

Q. Now, open the next book and see how the account runs from there on.

A. In this book; that account doesn't end in this book with that date. It is carried into the back part, and continuing here is the same balance, \$575.50.

Q. All right.

A. It is carried forward here.

Q. Yes. Now, continue right through.

A. There is an overdraft appears in this account on the 27th of January, 1906, of \$645.81.

Q. Now, from the period you last gave, showing a balance of five hundred and some odd dollars, it has been reduced by small checks down to this period, has it not? A. Down to this period, yes.

Q. Now, what check was drawn that caused the

(Testimony of B. M. Gregory.)

overdraft, what was the amount of it?

A. Two checks, a total of \$855.00.

Q. One for \$850.00 and one for \$5.00?

A. Yes, sir.

Q. Given on January 27th, or paid on January 27th, 1906, which caused an overdraft of \$645.81, is that correct? A. Yes. [1759—1429]

Q. Now, I wish you would continue through that account and note the next date on which that overdraft was reduced.

A. Reduced by a deposit of \$300.00 on the 6th of February.

Q. And that leaves an overdraft of—

A. \$391.77.

Q. Now, continue through the account until you find it reduced again.

A. On the 28th—

Q. On the 27th, it amounted,—on the 27th of February, 1906, what did it amount to?

A. \$937.78. On the 28th of February it was reduced by a deposit of \$350.00, leaving an overdraft of \$587.78.

Q. Now, continue through the account until you find that overdraft reduced.

A. Do you want those small deposits?

Q. It continued to increase until the overdraft, March 9, 1906, amounted to \$613.03, is that correct?

A. It is correct.

Q. And on the following day a deposit was made of \$100.00, which reduced the overdraft to \$513.03?

A. Yes.

(Testimony of B. M. Gregory.)

Q. Now, follow through the account and note the next occasion when there is a reduction of the overdraft.

A. On March 14th the overdraft amounted to \$539.77. On March 15th there was a deposit of \$500.00, reducing the overdraft to \$39.77.

Q. Now, continue until you find that overdraft reduced.

A. On April 4, 1906, the overdraft amounted to \$684.60.

Q. It had been increased steadily by small checks until it reached that amount?

A. Yes, sir. On April 5th, 1906, there was a deposit of \$500.00.

Q. Which reduced the overdraft— [1760—1430]

A. Reduced the overdraft to \$184.60.

Q. Now, continue through until you find that overdraft reduced. A. There was two deposits.

Q. How much did you reduce it?

A. There was a deposit of \$3,400.00, and checks amounting to \$3,420.00 on the 9th of April, 1906, the net result being an increase of the overdraft of \$20.00, making it \$220.70.

Q. All right. Then on April 10th, on the date the deposit was made, there was still an overdraft the date the deposit was made, the same day there were checks given that left the overdraft still \$220.70, is that correct? A. It did.

Q. Still continue through and tell when that overdraft was reduced. The overdraft continued to in-

(Testimony of B. M. Gregory.)

crease on May 29th, 1906, what was it?

A. \$1,239.92.

Q. Was there a deposit on the following day?

A. On May 31st there was a deposit of \$150.00.

Q. And that reduced the overdraft to how much?

A. To \$1,128.67.

Q. Now, proceed with the account until you find that overdraft decreased.

A. On July 11th, 1906, the overdraft had increased to \$1,789.27. On July 12th, 1906, there was a deposit of \$179.68, reducing the overdraft to \$1,609.59.

Q. Now, proceed until you find the overdraft decreased. I will ask you if the overdrafts continued without intermission to increase until they amounted to \$2,375.20 on September 28, 1906? A. They did.

Q. Now, up to this time, has the account of Kittie E. Dwyer shown a [1761—1431] balance to her credit, with the exception of the one small item that you have read from the account?

A. But the once, I believe.

Q. You have read every instance showing a decrease in the overdraft, have you?

A. I have. On the 30th day of October, 1906, the overdraft amounted to \$2,573.89.

Q. Now, it had continued to increase by small amounts until it reached that amount, had it not?

A. It had. On the 31st day of October there was a deposit of \$200.00, reducing the overdraft to \$2,388.89. Now, you will notice that every time we have mentioned a reduction the minutes don't show the exact figures, because there have been checks on that

(Testimony of B. M. Gregory.)

same day. I just wish to call your attention to that fact.

Q. Now, proceed through the account and state the next date on which you find the overdraft reduced. I wish you would preface your remarks by saying the overdraft increased until it reached a certain amount on a certain date.

A. I see. On December 3d, 1906, the overdrafts had increased until they amounted to \$3,378.70. On December 4th, there was a deposit of \$81.25, reducing the overdraft to \$3,325.20. On December 15th the overdrafts had increased to \$3,548.85. On December 17th there was a deposit of \$146.65, reducing the overdraft to \$3,412.20.

Q. Now, proceed until that overdraft is reduced.

A. On April 18th, 1907, the overdrafts had increased until they reached the sum of \$4,203.57. On January 19th there was a deposit of \$4,000.00, which reduced the overdraft to \$203.57.

Q. Now, proceed until you find that overdraft reduced.

A. On April 18th, 1907, the overdrafts had increased until they reached the sum of \$1,393.48. On April 19th there was a deposit of \$769.90, which decreased the overdrafts to \$623.58. [1762—1432]

Q. Now, proceed until that overdraft is decreased.

A. On the 27th of April, 1907, the overdraft had increased until it reached the sum of \$689.07. On the 29th of April, 1907, there was a deposit of \$1,000.00, which left a balance to the credit of Kittie E. Dwyer of \$307.43.

(Testimony of B. M. Gregory.)

Q. She continued to have a balance until when?

A. Until the 4th day of June, 1907, when there was two checks, amounting to \$27.00 which overdrew the account \$12.02.

Q. Which left an overdraft of \$12.02? A. Yes.

Q. Will you proceed through the account of Kittie E. Dwyer until you find that that overdraft has been reduced?

A. On the 18th of June, 1907, the overdraft had increased until it amounted to \$580.81. On the 19th of June, 1907, there was a deposit of \$362.00, which reduced the overdraft to \$218.81.

Q. What is the next increase of the overdraft?

A. On the 20th.

Q. The next day? A. The next day.

Q. What does it amount to then?

A. The increase amounts to \$313.75, which raises the overdraft to \$532.56.

Q. On the 22d of June, 1907, what do you find?

A. There is a further increase of \$113.35.

Q. What will that leave? The overdraft amounted to how much?

A. The overdraft amounted to \$645.91.

Q. Now, proceed until you find that overdraft decreased.

A. And on the 24th of June there are two deposits, amounting to \$1,249.50.

Q. Which leaves her a balance to her credit of how much?

A. Which leaves a balance to the credit of K. E. Dwyer of \$562.59. [1763—1433]

(Testimony of B. M. Gregory.)

Q. Now, proceed through that account until you find whether there is another overdraft or not.

A. On the 29th of June, 1907, there was a check issued or paid for \$553.50, which overdrew the account \$9.45.

Q. Will you proceed until you find that overdraft reduced?

A. On July 2d the overdraft had increased until it was \$33.05. On July 3d there was a deposit of \$468.35, which left a balance to the credit of Kittie E. Dwyer of \$418.65; on July 6th the account of Kittie E. Dwyer had been reduced until the balance to her credit was \$197.40, and on the 8th there was a deposit of \$200.43, which left her a credit of \$327.83.

Q. Now, will you follow that account through and tell whether it is materially increased or decreased?

A. On July 25th the account had been reduced until the balance to the credit of Kittie E. Dwyer was 19 cents. On July 26th there was a deposit to the credit of Kittie E. Dwyer of \$245.00, which left a net to her credit of \$235.19. On the 15th day of August, 1907, the account had been reduced until the balance to the credit of Kittie E. Dwyer was \$3.85. On the 16th of August there was a deposit to the credit of Kittie E. Dwyer of \$100.00, which increased the balance to \$88.85.

Q. Go ahead.

A. On August 31st the account had decreased until it amounted to \$19.60, and on the 3d of September there was a deposit to the credit of Kittie E. Dwyer of \$257.70.

(Testimony of B. M. Gregory.)

Q. Leaving a balance?

A. Leaving a balance of \$98.05. On the 13th of September the account had been reduced until the balance to the credit of Kittie E. Dwyer was 30 cents, and on the 14th of September there was a deposit to her credit of \$150.00, and a check of \$50.00 was paid the same day, which left a net credit to Kittie E. Dwyer of \$100.30. [1764—1434]

Q. Just see if you find any big deposits there.

A. On the 21st of September, 1907, there was a deposit to the credit of Kittie E. Dwyer of \$236.50; also checks paid that day in the amount of \$225.28, with the net result that there was a credit, a balance to the credit of Kittie E. Dwyer of \$46.52. On the 4th of October, 1907, there was a deposit of \$150.00 to the credit of Kittie E. Dwyer; also a check paid of \$152.-85, leaving a net balance of \$9.17 to the credit of Kittie E. Dwyer.

Q. Now, I wish you would look through and see if that account is overdrawn any more.

A. Here is a small overdraft.

Q. I don't care for the little ones. Just say the account was again overdrawn on a certain date.

A. The account was overdrawn on October 31, 1907, \$1.10.

Q. Did that overdraft increase or decrease?

A. Here is another little black deposit.

Q. See if you find any other overdrafts.

A. There are one or two small deposits for small amounts.

Q. Well, I don't care about that.

(Testimony of B. M. Gregory.)

A. Here is an overdraft of \$9.00.

Q. The deposits run along, small deposits and small checks, until on February 15th, 1908, it shows a small overdraft of \$9.34? A. \$9.34.

Q. How long does that overdraft continue?

A. To the 17th, until the deposits cover it.

Q. Now, I will ask you to look through the book and see if you find any overdrafts of any material size. State what the overdraft there is.

A. On May 10th, Kittie E. Dwyer's account shows an overdraft of \$4.09.

Q. Does that overdraft continue for any period?
[1765—1435]

A. Until the 1st of August.

Q. When it amounts to how much?

A. The 31st of July it is jumping down until it amounts to \$7.29.

Q. It is always an overdraft? A. Yes.

Q. Then there was a deposit made, was there?

A. On August 1st there was a deposit made, which leaves a balance to her credit of \$104.69. This book closes the 1st of August, 1908; that was when it was transferred to the other book.

Mr. GORDON.—Well, I guess that will be enough.

At this time a recess was taken until two o'clock P. M. [1766—1436]

[Testimony of Lewis M. Gray, for Complainant.]

LEWIS M. GRAY, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Gray, will you state your full name?

A. Lewis M. Gray.

Q. What is your occupation?

A. Special bank accountant, Department of Justice.

Q. Are you familiar with the books of the Lewiston National Bank? A. I am.

Q. Have you before you the ledgers of the Lewiston National Bank? A. Two of them.

Q. From what date?

A. They run from January, 1905, to August, 1908.

Q. And they show the accounts of the depositors covering that period? A. Yes.

Q. I will ask you to look in those ledgers and tell us whether or not Martha E. Hallett had an account with the Lewiston National Bank on the books of that institution. What do you find in the ledgers relative to Martha E. Hallett which you are looking through now?

A. I am looking for her account in one of these ledgers here.

Q. Do you find an account of Martha E. Hallett in the ledgers of the Lewiston National Bank from January, 1906, through August 31, 1908?

A. Yes, there was such an account. It is in the

(Testimony of Lewis M. Gray.)

inactive ledger, and the inactive ledger is not up here.

Q. Have you made an investigation or examination of the books of the Lewiston National Bank to find whether or not Martha T. Hallett did have an account at the Lewiston National Bank?

A. She did have an account in these ledgers in 1907.

Q. Have you a memorandum of that research?
[1767—1437] A. I have that—

Q. Mr. Gray, is there an account of George H. Kester and William F. Kettenbach on the books of the Lewiston National Bank under the head of Kester and Kettenbach?

A. Yes, sir; there is an account of that kind in the ledger, Kester and Kettenbach.

Q. Will you turn to that account and state when it was opened and what the condition of the account was during the period that it ran?

A. The first entry in the account was on the 13th of December, 1906, when the bank paid a check; there was a check charged to their account of \$2,781.50.

Q. Was there a deposit in that account?

A. There was no deposit in the account at all.

Q. Then the account was opened with an overdraft?

A. The account that night showed an overdraft of \$2,781.50.

Q. Now, can you show from day to day whether that overdraft was increased or decreased during its continuance?

(Testimony of Lewis M. Gray.)

A. The first credit that appears on that account was on the 22d of January, 1907; it is a small credit of \$16.51.

Q. What was the standing of the account at that time?

A. The account on the night before was overdrawn \$8,698.73.

Q. Will you point out any date on which that overdraft was decreased?

A. On the 6th day of February, 1907, it was decreased \$10,000.00.

Q. Now, what was it that time?

A. On the 5th of February the overdraft was \$10,301.48; with a small check on the 7th and a deposit of \$10,000.00 showed on the night of the 7th, the overdraft was \$307.68.

Q. Now, do you have any books of the bank that will show whether or not a note was given by Kester and Kettenbach on that date?

A. Yes; the bills receivable register will show that. I find in [1768—1438] the bills receivable book of the Lewiston National Bank this entry: "15,976. That is the number. Dated on the 12th of February, 1907, "Kester and Kettenbach, by W. F. Kettenbach, on demand, at eight per cent., \$10,000.00."

Mr. TANNAHILL.—Is there any memorandum of its payment there?

A. It is marked paid July 9, 1907. That date doesn't accord there, but these dates are rather uncertain. That is supposed to be the date of the note, and that is marked 2-12-07.

(Testimony of Lewis M. Gray.)

Q. (By Mr. GORDON.) That would be the 12th of February?

A. That would be the 12th of February. This credit is on the 7th of February.

Mr. TANNAHILL.—That is marked 2-15.

WITNESS.—No; 07, 2-12.

Mr. GORDON.—All right.

Q. Now, did that leave an overdraft still?

A. That left an overdraft, a small overdraft of \$307.68, an overdraft.

Q. Now, will you continue through that account until you find a decrease in the overdraft?

A. On the 4th day of March there is a deposit to the account of \$900.00. The day before the overdraft was \$534.23.

Q. That left a credit?

A. There was a check of \$50.00 and that left a credit balance of \$315.77. That credit balance runs along until,—on the 1st day of April I find a credit to the account of \$576.00. That increased the credit balance to \$824.77. On the 15th of April there was a credit balance of \$824.77, and on the 16th of April there was a check charged against the account for \$2,685.40. That made that night an overdraft of \$1,860.63.

Q. Now, continue through the account and note when that overdraft is decreased. [1769—1439]

A. On the 18th of June the overdraft was \$6,021.34; on the 19th of June there was a deposit of \$60.00, leaving the overdraft that night \$5,961.34.

Q. Now, was that overdraft ever decreased?

(Testimony of Lewis M. Gray.)

A. Yes. And the next day there was a check charged for \$2,348.80, and a deposit of \$561.70. That left the net overdraft that night \$7,748.44.

Q. That is in June, 1907?

A. In June, 1907. On the 28th of June, 1907, the overdraft was \$9,083.75. On the following day there was a charge of \$430.67, and a deposit of \$250.00. That left the overdraft that night \$9,264.42.

Q. Now, was that overdraft ever decreased?

A. On the 7th day of July the overdraft was \$14,863.52. On the 8th day of July there was a charge against the account of \$10,020.00, and a deposit of \$27,000.00, leaving a credit balance of \$2,116.48.

Q. Do you know what that \$27,000.00 was, by the books of the bank?

A. The books of the bank show that on that day W. F. Kettenbach account was charged \$13,500.00 and George H. Kester's account was charged \$13,500.00. That is, that \$13,500.00 doesn't show on the ledgers, but there was a charge of \$35,197.00, and looking that up on the books I found that there was several checks went in making up \$35,197.00, and this \$13,500.00 was included in that \$35,197.00.

Q. Were any notes given that day?

A. Apparently there were. July 9th, 1907, No. 16202, George H. Kester and Edna P. Kester, six months, due January 9, 1908, \$20,000.00. It is marked paid \$7,000.00 on the 23d of August, and the balance on the 28th day of December.

Q. 1907? A. 1907.

(Testimony of Lewis M. Gray.)

Q. What was the overdraft in July, July 9th, 1907?

A. Of whom? [1770—1440]

Q. Kester and Kettenbach.

A. Kester and Kettenbach? There was no overdraft at the close of business on July 9th, 1907. That was taken up with that \$27,000.00; that was on the morning of the 9th.

Q. What was it on the 6th of June?

A. On the 8th of July it is \$19,863.52.

Q. What is the overdraft?

A. That is the overdraft. On the 9th that \$27,000.00 went in and left a balance.

Q. That account you speak of being charged was the personal account of William F. Kettenbach?

A. William F. Kettenbach, thirteen, and George H. Kester.

Q. Was that charged as an overdraft on the personal account?

A. The \$13,500.00 against W. F. Kettenbach account made an overdraft that night, but the next day it was made good.

Q. How? A. He deposited \$15,000.00.

Q. Did he give a note that day?

A. No, he did not. No note appears in here. That \$15,000.00 apparently was cash.

Q. Now, can you show the notes given by Kittie E. Dwyer and discounted by the Lewiston National Bank?

A. Yes; the first note I find on here of Kittie E. Dwyer's—

Q. On where?

(Testimony of Lewis M. Gray.)

A. On the bills receivable for the Lewiston National Bank, No. 13,411, on the 3d of July, 1903, William Dwyer and Kittie E. Dwyer, endorsed W. F. Kettenbach, one year, due July 3, 1904, \$2,800.00. That is marked as paid June 30, 1905.

Q. What is the next you find?

A. The next I find is No. 13650, dated the 28th of December, 1903, Kittie E. Dwyer and William Dwyer, on demand, \$1,750.00. That is marked [1771—1441] paid June 30, 1905.

Q. Who was that endorsed by?

A. It wasn't endorsed by anybody. There is nothing said; so far as this book is concerned it seems to be what is known as single name paper. The next is 13,034, dated November 16, 1904, William Dwyer and Kittie E. Dwyer, demand, \$1,000.00. That is marked paid June 30, 1905. No. 14,904, 6-29, 05, William Dwyer and Kittie E. Dwyer, one year, June 29, 1906, \$7,100.00. Marked paid October 29, 1908. Now, that \$7,100.00, that note for \$7,100.00 that I just read off, takes up the three notes I read off before, \$2,800.00, \$1,750.00 and \$1,000.00, and an overdraft shown in the ledger there of about \$1,300.00.

Q. What is the next note you find? Tell what they are for.

A. The next note I find that went to her credit is 15,356, dated March 10, 1906, M. L. Goldsmith, 90 days, due June 10, 1906, \$500.00. Paid December 31, 1906. That went to her credit in the ledger. No. 15,942, dated January 18, 1907, Kittie E. Dwyer and William Dwyer, payable on demand, \$4,000.00.

(Testimony of Lewis M. Gray.)

Marked paid December 31, 1907.

Q. Do you know what that was for?

A. That was for an overdraft of the account. Page 296. No. 16,102, April 23, 1907, Kittie E. Dwyer and William Dwyer, on demand, \$1,000.00, marked paid December 31, 1907. That was for an overdraft. 16,283, August 15, 1907, William Dwyer, on demand, \$100.00, September 3, 1907. That was credited to the account of Kittie E. Dwyer.

Q. Was there an overdraft then?

A. No. 16,342, September 14, 1907, William Dwyer, on demand, \$150, marked paid June 8, 1908.

Q. Was that to Kittie Dwyer's account?

A. Those all went to Kittie E. Dwyer's account. 16,458, December 30, 1907, William Dwyer, Kittie E. Dwyer, one year, due December 30, 1908, \$5,800.00, marked paid 10/29/08.

Q. How much was that for? [1772—1442]

A. \$5,800.00.

Q. Do you know what that was for?

A. That was to renew that \$4,000.00 and the \$1,000.00, and the balance was an overdraft. In register No. 3, Bills Receivable of the Lewiston National Bank, 17,042, dated December 31, 1908, William Dwyer and Kittie E. Dwyer, on demand, \$14,056.00, marked paid February 3, 1909. On the same day in the cash book of the Lewiston National Bank all those former notes that I have read off were credited up, \$7,100.00 and \$5,800.00, and there was some interest on an overdraft, making it \$14,056.00. That \$14,056.00 ended up on the 3d day

(Testimony of Lewis M. Gray.)

of February, 1909; that is charged on the cash-book to the Idaho Trust Company; they took it out of the Lewiston National Bank.

Q. Anything since then?

A. Nothing since then. That was the end of that business.

Q. Now, have you any of the deposit slips of Kittie E. Dwyer that are a part of the records of the Lewiston National Bank?

A. Yes, there are some here, some few that I ran across.

Q. Are you acquainted with the handwriting of George H. Kester?

A. Yes. Here is one part of a ticket of the Lewiston National Bank, deposit by Kittie E. Dwyer, on the 7th of November, 1903, \$266.55. On the margin it says Ex. Bill by K. & K. That is in George Kester's handwriting. On May 31, 1906, Kittie E. Dwyer, \$150.00.

Q. Was that a deposit slip?

A. That is a deposit slip, deposited in the Lewiston National Bank, Kittie E. Dwyer, by George H. Kester, one half payment on Little George, horse, buggy, etc.

Q. Whose handwriting is that?

A. That is George Kester's. December 4th,—there is no year,—but that was 1906,—K. E. Dwyer deposit ticket Lewiston National Bank, check 123, \$81.25, K in a circle. That is Robnett's handwriting. He made out that ticket. On the 17th of December, 1906, Kittie E. Dwyer, [1773—1443]

(Testimony of Lewis M. Gray.)

\$146.65; in the margin there is a K in a circle.

Q. Whose handwriting is that?

A. That handwriting I don't know. I am under the impression that that is Bert Chapman; I am not sure about it. It isn't Kester, nor Kettenbach nor Robnett.

July 3, 1907, deposit slip deposited by Kittie E. Dwyer \$468.35. In the margin it says K. & K. That is by George Kester.

August 31, 1907, deposit ticket, Kittie E. Dwyer, \$12.50, by W. F. K., account Frank Bonney. That is in Will. Kettenbach's handwriting.

September 24, 1907, \$60.00, deposit slip, this is Kittie E. Dwyer's deposit slip, check to William Bollinger, apparently, N. & N., \$60.00.

Then on March 30, 1906, deposit ticket Kittie E. Dwyer, \$320.00 by George H. Kester, in the handwriting of George H. Kester. That is all the tickets, apparently.

Q. When was that deposit of \$320.00?

A. \$320.00 was on the 30th of March, 1906.

Q. What is this paper that you have there? What is this? (Indicating paper.) Where did you get that?

A. I don't know who made this out. It was given to me by one of the special agents to find out whether a check was charged to Kittie E. Dwyer's account, and I only know what they put there, copy of a counter check. I looked it up on the ledger and found that there was such a check charged, and that was about the day she deposited \$320.00, and that

(Testimony of Lewis M. Gray.)

made the overdraft \$649.60 at that time.

Q. You don't know where that came from?

A. I don't know where it came from originally, no; I haven't the slightest idea.

Mr. GORDON.—Do you know anything about that, Mr. Tannahill?

Mr. TANNAHILL.—No.

Mr. GORDON.—Q. What else have you there of Kittie E. Dwyer's? [1774—1444]

A. I have a list here of all the credits to her account.

Mr. TANNAHILL.—You have been over all that.

WITNESS.—You have been over all of that.

Mr. GORDON.—Q. You can't tell who the credits were made by?

A. Well, yes, you can tell in most cases who they were made by, but you can't tell what they are.

Q. You have gone through all that practically, haven't you? A. Yes.

Q. I will ask you if you have before you a certified copy of the report to the Comptroller of the Currency of the condition of affairs of the Lewiston National Bank? A. Yes; two years.

Q. Which is the first one you have?

A. This is the first one; January 26, 1907.

Q. That is a report of the bank?

A. Report of the condition of the bank on the 26th of January, 1907.

Q. By whom was that signed?

A. By George H. Kester, cashier, and attested J. Alexander, O. E. Guernsey and J. B. Morris, direct-

(Testimony of Lewis M. Gray.)

ors. That is dated the 29th of January, but it is at the close of business on the 26th of January.

Q. It reports the condition of the bank on the 26th of January? A. Yes.

Q. Now, there is a schedule on that under the heading, "Loans and discounts secured by real estate mortgages or other liens on realty." Will you read that report and state what it shows?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

A. 1907, January 26th, Kittie E. Dwyer, amount carried on books \$7,100.00; amount of prior liens on property, if any, left blank; estimated actual value of property \$12,000.00; date when security was taken June 29, 1905; state whether taken for debts previously contracted. [1775—1445] All taken for debts previously contracted.

Then comes William Shultz, \$1,200.00, actual value \$2,000.00; date when taken, September 20, 1904.

C. S. White, \$5,000.00; estimated actual value \$10,000.00; security taken November 27, 1903.

And Lillian Van Brunt, \$1,114.00; estimated actual value, \$2,000.00; security taken December 20, 1904. Then out in the margin where it says "state whether taken for debts previously contracted," "all taken for debts previously contracted," covers all four of those.

Q. Will you proceed with those?

A. Report to the Comptroller of the Currency—

Mr. TANNAHILL.—We object to any evidence relative to the reports of the Comptroller of the Cur-

(Testimony of Lewis M. Gray.)

rency on the ground that it is incompetent, irrelevant and immaterial.

A. (Continuing.) —at the close of business on the 22d day of March, 1907.

Mr. GORDON.—Q. That is the report of—

A. Report at the close of business on the 22d of March, 1907.

Q. What report is it?

A. The report of the Lewiston National Bank.

Q. By whom was it signed?

A. The report is made on the 1st day of April, 1907, and signed by George H. Kester, cashier, J. Alexander, William A. Libert, and J. B. Morris. Schedules under the head of "Loans and discounts secured by real estate mortgage or other liens on realty," Kittie E. Dwyer, \$7,100.00; amount of prior lien on property, if any, is left blank. Estimated actual value \$12,000.00; date when security was taken, June 29, 1905.

Lillian Van Brunt, \$1,114.00; estimated actual value of property, \$2,000.00; date when security was taken, December 20, 1904.

C. S. White, \$5,000.00; estimated actual value of property, \$10,000.00; [1776—1446] date when security was taken, November 27, 1903; all taken for debts previously contracted.

The report of the condition of the Lewiston National Bank at the close of business on the 3d day of December, 1907, to the Comptroller of the Currency,—

Mr. TANNAHILL.—The defendants make the same objection.

(Testimony of Lewis M. Gray.)

WITNESS.—(Continuing.) —made on the 4th day of December, and signed Edward C. Smith Cashier, Frank W. Kettenbach, J. Alexander and R. C. Beach, directors. In the schedules, under the head of—

Mr. TANNAHILL.—What date is that?

A. On the 3d day of December, 1907. Under the head of schedules, "Loans and discounts secured by real estate mortgage or other lien on realty," Kittie E. Dwyer, \$12,000.00; amount of prior lien on property, if any, none. Estimated actual value of property \$25,000.00. Date when security was taken, January 29, 1905, July 18th, 1907. State whether taken for debts previously contracted. Yes.

Report of the Lewiston National Bank to the Comptroller of the Currency at the close of business on the 14th day of February, 1908. The report is made out on the 21st day of February, 1908, and signed Edward C. Smith, Cashier, Frank W. Kettenbach, William A. Libert, and J. Alexander, directors. Under the head of loans and discounts secured by real estate mortgage or other liens on realty, William Dwyer, \$12,100.00; amount of prior lien on property, if any, none. Estimated actual value of property, \$25,000.00; date when security was taken June 29, 1905, and February 17, 1906. State whether taken for debts previously contracted. Yes. I guess it doesn't make any difference, but they made a mistake in putting that down there; it should be \$12,900.00 instead of \$12,100.00.

Report to the Comptroller of the Currency by the Lewiston National Bank at the close of business on

(Testimony of Lewis M. Gray.)

the 15th day of July, 1908, signed Edward C. Smith, cashier, J. Alexander, J. B. Morris and William A. Libert, directors. Schedules, under the head of loans and discounts [1777—1447] secured by real estate mortgages or other liens on realty, William Dwyer, \$12,900.00; amount of prior lien, if any, none. Estimated actual value of property, \$25,000.00; date when security was taken, January 29, 1905. State whether taken for debts previously contracted. Yes.

Report to the Comptroller of the Currency by the Lewiston National Bank at the close of business on the 23d day of September, 1908, schedules, under the head of loans and discounts secured by real estate mortgages or other liens on realty, William Dwyer, \$12,900.00; amount of prior lien on property, if any, none; estimated actual value of property, \$25,000.00; date when security was taken, June 29, 1905. State whether taken for debts previously contracted. Yes.

Q. What is the date of the next one?

A. I didn't read,—there is one in between, on the 14th day of May, 1908, but it is the same as the preceding one.

Q. May, 1908. Now, there are two after that, aren't there?

A. Yes, but they don't come in after September, 1908.

Q. Now, will the register of the Lewiston National Bank show whether or not there was a note given by the firm of Naylor & Norlin, in about the sum of

(Testimony of Lewis M. Gray.)

\$30,000.00, in July, 1907?

A. No, I don't think it will. I find in the register of bills receivable of the Lewiston National Bank, No. 16,235, dated June 22, 1907, Naylor & Norlin Company, Limited, N. C. Naylor, President, endorser George H. Kester, demand \$15,000.00, marked paid on the 15th day of August, 1907. I find No. 16,256, in the same book, August 2, 1907, Naylor & Norlin Company, Limited, by George H. Kester, endorser George H. Kester, demand \$5,000.00, marked paid August 15, 1907.

Q. Now, were there any reports to the Comptroller by the Lewiston National Bank covering that period?

A. Wait a minute. There is another one here in the same book, No. 16,276, August 12, 1907, Naylor & Norlin Company, Limited, N. C. Naylor, president, endorser George H. Kester, demand \$20,000.00. That [1778—1448] was paid by four installments, December 28, 1907, \$5,000.00; April 3, 1908, \$5,000.00; July 13, 1908, \$5,000.00; November 18th, \$2,000.00, and the balance marked paid February 2, 1909, \$3,000.00.

Q. When was that—1909? A. Yes.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record, **FILED** JAN 23 1913

VOLUME VI.

(Pages 2001 to 2400 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Nos. 2209, 2210 AND 2211.

**United States
Circuit Court of Appeals
For the Ninth Circuit.**

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME VI.

(Pages 2001 to 2400 Inclusive.)

**Appeals from the District Court of the United States for the
District of Idaho, Central Division.**

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM
DWYER, and FRANK W. KETTENBACH,

Appellees.

Transcript of Record.

VOLUME VI.

(Pages 2001 to 2400, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

(Testimony of Lewis M. Gray.)

Q. Now, were there any reports to the Comptroller covering the period of the life of any of those notes?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Yes.

Mr. GORDON.—Q. Which reports was it?

A. Well, it didn't come in under any,—yes, it did. No, there is nothing there that would bring it into the reports to the Comptroller.

Q. None of the three?

A. No. George Kester was no longer a director of the bank when these notes were given, and the \$20,000.00 is within the limit.

Q. Well, is there a note of Naylor & Norlin in the sum of \$30,806.42? A. I don't see it.

Q. On the books of the Lewiston National Bank?

A. I don't know of any such note.

Q. Can you find any in the register of bills receivable?

A. I haven't found any of that kind at all.

Mr. TANNAHILL.—The defendants object to this line of inquiry, upon the ground that it is incompetent, irrelevant and immaterial, and an investigation undoubtedly with the purpose of obtaining some information or evidence for use in another case, and not for the purpose of using it or benefiting this case one way or another, and it is irrelevant and immaterial and does not tend to prove or disprove any of the issues in the cause. [1779—1449]

Mr. GORDON.—I don't know. You have set up in your answer to the bill that a certain deed was given to

(Testimony of Lewis M. Gray.)

secure a note of \$30,806.42, given by Naylor & Norlin, and guaranteed by George H. Kester.

Mr. TANNAHILL.—That is a matter for our defense and for us to show when we get to it; it is not a matter that the Government is interested in. We allege too that that note was given to the Idaho Trust Company, and not to the Lewiston National Bank, and it is none of the affairs of the Lewiston National Bank. You might look until doomsday and you won't find it in the records of the Lewiston National Bank.

Mr. GORDON.—Q. Can you find any such note as that on the books of the bank?

A. No, there is no such note on the books of the bank. The notes I read off to you are the only ones there are.

Q. Now, have you the books here that will show the accounts of the depositors of the Lewiston National Bank in April, 1904? A. Yes.

Q. I wish you would look there and see whether Martha E. Hallett had an account in the Lewiston National Bank, either an open account or an account by way of certificate of deposit, or any other account, during April, May, June or July, 1904.

A. There is April, 1904; there is no account in there at all.

Q. Now, I will ask you the question: Is there an account of Martha E. Hallett,—did Martha E. Hallett have an account on the books of the Lewiston National Bank April 25, 1904? A. No.

Q. Did she have an account with said bank July

(Testimony of Lewis M. Gray.)

15, 1904? A. She did not.

Q. Can you find on the books of the bank, between November, 1903, and July 30, 1904, any account with Martha E. Hallett? A. No. [1780—1450]

Q. Now, you are reading from the ledger accounts, are you? A. Yes, from the ledger accounts.

Q. Now, what other accounts did they have at the bank,—the certificate of deposit account?

A. There might have been a certificate of deposit issued.

Q. Will you look and see if, during that period, a certificate of deposit was issued or outstanding or existing in the name of Martha E. Hallett during the period from November, 1903, to the 1st of August, 1904? A. No, I find nothing here of that name.

Q. I will ask you to look at the books of the Lewiston National Bank and tell us whether Van V. Robertson had an account with that institution at any time during the period from December 1, 1902, to June, 1903.

A. I find a deposit on the 10th day of April of \$100.00.

Q. What year? A. 1903.

Q. Is that the first deposit that you find?

A. That opens the account.

Q. That opened the account of Van V. Robertson?

A. Yes; April 10th, 1903.

Q. What is that account on the 20th of May, 1903?

A. Well, the balance on the 20th of May would be \$435.00.

Q. What is it on the next day?

(Testimony of Lewis M. Gray.)

A. Well, there isn't any next day. You said the 20th, didn't you?

Q. Yes. A. Well, on the 22d it is \$423.00.

Q. What is the account right along there from ten days before that, from the 10th of May? Read what the balances are.

A. This is an inactive account, and the balances are only run out once a month, May 18th to June 15th, there is just one balance put down [1781—1451] here, \$423.00, and during that time there was just two checks, \$12.00 on the 22d of May and on the 12th of June \$20.00.

Q. That covers the period from when?

A. May 18th to June 15th; the period before that, from April 18th to May 16th. There are \$505.00 total checks.

Q. What is the balance on the 18th of April?

A. The balance on the 18th of April was \$100.00; that is that \$100.00 that he deposited in the first place.

Q. What was the balance on the 16th of May?

A. \$455.00. He deposited \$60.00 on the 2d and \$800.00 on the 5th.

Q. You have read all the checks drawn during that period? A. All during that period.

Q. There was nothing drawn but two checks between the—

A. Between the 16th of May and the 15th of June only two checks.

Q. For what amounts were they?

A. \$12.00 and \$20.00.

(Testimony of Lewis M. Gray.)

Q. I will ask you to look through the books of the Lewiston National Bank and tell whether Geary Van Artsdalen had an open account or had an account with the bank at any time between the 1st of January, 1903, and the 1st of January, 1904.

A. There is nothing between January and July, 1903, in the name of Van Artsdalen.

Q. All right. Is there an account on the books of the Lewiston National Bank known as the Kester and Kettenbach timber account?

A. Yes, there is such an account here. The Kester and Kettenbach timber account was opened on June 19th, 1903, with a deposit of \$12,500.00.

Q. Now, do you know whether that continued for any length of time? Do you know in whose handwriting that entry was made?

A. No; I don't think—I think, that is, I am under the impression that that is Chapman; it looks like it anyway. [1782—1452]

Q. What is the next entry?

A. There is nothing there except that one entry in there.

Q. I will ask you if Elizabeth P. White had an account with the Lewiston National Bank during the year 1904? A. Elizabeth White?

Q. Elizabeth White.

A. She had two accounts, one Elizabeth White and the other was marked Elizabeth White, private. She always ran those two accounts.

Q. What was the condition of either of those accounts on April 25, 1904?

A. April 25th she had a balance of \$95.03, Eliza-

(Testimony of Lewis M. Gray.)

beth White; Elizabeth White, private, a balance of \$1,367.43.

Q. Now, what was the condition of either of those accounts July 14, 1904?

A. July 14th, Elizabeth White \$616.75, balance; Elizabeth White, private, \$2,483.56.

Q. Now, I will ask you to look at the account of William J. White, and tell what his account was April 25, 1904.

A. William J. White on the 25th of April, 1904, was overdrawn \$746.07.

Q. Run through that account and see when that overdraft was reduced.

A. He had two or three small deposits that didn't materially decrease it.

Q. When were they?

A. There was \$64.77 on the 17th of May, and \$53.00 on the 11th of May.

Q. What was the overdraft at those dates?

A. On the 10th of May the overdraft was \$955.89, and on the 11th of May there was a deposit of \$53.00, and the overdraft that night was \$912.54. [1783—1453]

Q. Now, state the next period that you find it reduced.

A. Then on the 16th of May the overdraft was \$962.51. On the 17th of May he deposited \$64.77, and that night the overdraft was \$897.77. On the 20th of June the overdraft was \$1,137.90. On the 21st of June a deposit of \$90.81 was made. At the close of business that day the overdraft was \$1,047.09. On the 8th of July the overdraft was

(Testimony of Lewis M. Gray.)

\$1,108.90. On the 9th of July there was a deposit of \$83.03, and at the close of business the overdraft was \$1,045.87.

Q. What was the condition,—was the overdraft reduced from the last date that you read to the 14th of July, 1904? A. No; it was increased.

Q. What was the condition of William J. White's bank account on the 13th of July, 1904?

A. An overdraft of \$1,054.37.

Q. What was it on the 14th? A. \$2,078.87.

Q. What had been drawn during that period?

A. A check of \$1,022.50, and a check of \$2.00.

Q. Now, do you know when that overdraft was taken up or made good?

A. On the 20th of July there is a credit to his account of \$2,350.00, making a credit balance of \$18,55. That was made by a note.

Q. Tell how it was made.

A. In the register of bills receivable of the Lewiston National Bank, No. 13,928, dated July 20, 1904, William J. White, six months, due January 20, 1905, \$2,350.00, marked paid March 22, 1905.

Q. Do you know how that was paid? Do the books of the bank show how it was paid?

A. There was a new note on the 22d of March, given by William J. White, for \$500.00 That doesn't seem to have gone to his account. I don't know—

Q. That don't make any difference. Go on. Do you know how that [1784—1454] was paid and the other note was paid?

A. There is nothing to show how that note is paid.

(Testimony of Lewis M. Gray.)

except that on that day there is \$2,500.00 charged to Elizabeth White's account.

Q. Was there a check put in?

A. I can't tell whether it was a check. There was an amount of \$2,500.00 charged to her account, and this \$2,500.00 is not charged to William J. White's account. I have no means of telling how that \$500.00 note was paid. June 5th; it wasn't charged to his account.

Q. Did Mamie P. White have an account with the Lewiston National Bank in her own name?

A. I haven't found one in the ledger.

Mr. TANNAHILL.—She didn't; she said she didn't.

Mr. GORDON.—I think she said she didn't. That is all.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Have you made search for anything, for all of the notes of Navlor & Norlin Company in favor of the Lewiston National Bank?

A. All that were in existence, you mean?

Q. Yes.

A. Yes; those that I found on there were the only ones.

Q. Those were the only ones? A. Yes.

Q. Are you positive that there is no other notes?

A. Well (pause). No, I wouldn't say now that I am absolutely positive that there are no other notes.

Q. There may have been some other notes that was in existence at that time?

(Testimony of Lewis M. Gray.)

A. There may have been some other notes in existence at that time.

Q. And you have no way of determining what credits have been made on those notes, the notes aggregating something like— [1785—1455]

A. \$30,000.00.

Q. \$40,000.00. Now, have you any way of determining whether there were credits on those notes, leaving a balance? In fact, there may have been credits on the note, may there not?

A. Well, not unless they were in this book. I have proved up these books on the loans and discounts for a number of years, and with the exception of about \$1,600.00 the books prove, so that there couldn't have been any payments of any account on those notes unless they were in these books.

Q. Unless they were omitted?

A. Well, if they were omitted altogether they wouldn't have gone into the funds of the bank. I mean that any money paid into the bank on account of these loans must be on here unless it was stolen.

Q. Then, you have found a \$15,000.00 note, a \$5,000.00 note, and a \$20,000.00 note, signed by Naylor & Norlin Company, guaranteed by George Kester?

A. Yes, sir; guaranteed by George Kester.

(By Mr. BABB.)

Q. Mr. Gray, I will ask you to state what you found on the books of the Lewiston National Bank the indebtedness of George H. Kester to be to that bank on the 6th of July, 1907, both as principal and

(Testimony of Lewis M. Gray.)

as surety and guarantor and endorser?

A. Well,—in 1907?

Q. Yes.

A. I didn't pay any attention to what he was surety on at that time.

Q. Well, what did you find the amount to be in which he was indebted as principal at that time?

A. As I remember it, it was \$20,000.00.

Q. That was on notes or overdrafts? [1786—1456]

A. That was,—he made his overdraft good by a note.

Q. It was \$20,000.00 and interest then?

A. \$20,000.00 and interest.

Q. Now, did you make any examination to ascertain what he owed as guarantor?

A. No, I did not, because when I was going through there that hadn't come up at all.

Q. Did you make any examination to find out what Naylor & Norlin were then owing to the bank?

A. I knew that they owed at that time about \$40,000.00. I have,—I took that off.

Q. What are the items on there, the amounts?

A. On July 1st their overdraft was \$25,647.53, and on the 26th of July it was \$42,330.99.

Q. What was it on the 6th of July?

A. According to this it was \$30,390.13.

Q. Was that evidenced by a note of Naylor & Norlin? A. Is that the forty-two thousand?

Q. This thirty thousand.

A. Well, that ran along until the 26th of July,

(Testimony of Lewis M. Gray.)

when it was reduced to \$2954.00; it was reduced \$40,000.00 at that time, credited to the account. On July 26th the overdraft was \$42,330.99. On the 27th they drew a check for \$1,889.96, and they deposited \$26,216.92 and \$15,000.00. The \$15,000.00 was their note. The \$26,000.00 appears to have been a cash item drawn on Seattle; at least there was an item of that amount sent up to the National Bank of Commerce on that day, and we take it for granted that that is what that was.

Q. The indebtedness then was reduced the amount of that note?

A. Well, that note of \$15,000.00, and there was still an overdraft of \$2,954.00, and that was on the 1st of August they gave another [1787—1457] note for \$5,000.00.

Q. What is owing now at this time as shown by the books on that account?

A. At this time there is nothing owing at the Lewiston National Bank; it was all taken out at the time of the transfer, as I understand it, in January.

Q. Taken out? You mean paid?

A. It was paid, yes, so far as,—yes, paid.

Q. Paid or assigned?

A. I really don't know whether it was paid or assigned. I only know it isn't on the books.

Q. It has either been paid or assigned?

A. Yes, paid or assigned. The Lewiston National Bank don't hold any indebtedness against them now.

Q. That was about the 1st of January?

A. That was the 8th or 9th of January.

(Testimony of Lewis M. Gray.)

Q. Now, that indebtedness of George H. Kester, \$20,000.00 and interest, what has become of that?

A. That went out the same way, on the 8th of January.

Q. At the same time?

A. Yes, at the same time.

Q. Then did you find there an indebtedness of William F. Kettenbach to the Lewiston National Bank?

A. I don't think there was anything at that time.

Q. The 20th of December, 1908, the 9th of March, 1909; have you looked for those?

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination, the matter which the inquiry relates to not having been inquired into on the examination in chief, and if counsel desires to put in his case let him make the witness his own.

Mr. BABB.—You didn't inquire about Kettenbach at all?

Mr. GORDON.—Not about this matter you are referring to, sir. All [1788—1458] I inquired about was his overdrafts and how they were settled.

Mr. BABB.—Well, I think this will bear on that.

Q. The 20th of December, 1908, and the 9th of March, 1909? A. In 1908?

Q. Yes. A. No, I have not.

Q. You haven't examined the condition at that time? A. No.

Q. And you don't know? A. I don't know.

Mr. BABB.—That is all.

(Testimony of Lewis M. Gray.)

Mr. GORDON.—That is all, Mr. Gray.

WITNESS.—That Naylor & Norlin was \$8,000.00.
The rest of it has been paid, Mr. Babb.

Mr. BABB.—There is \$8,000.00 still due?

A. Not to the Lewiston National Bank. The balance on the 1st of January was \$8,000.00. [1789—1459]

[**Testimony of Joseph M. Molloy, for Complainant.**]

JOSEPH M. MOLLOY, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Joseph Molloy? A. Yes, sir.

Q. Mr. Molloy, were you at one time employed in the United States land office at Lewiston, Idaho?

A. I was.

Q. During what period? A. From 1901 to 1906.

Q. And do you remember whether or not there was some land that became open to entry on the 25th of April, 1904?

A. I couldn't state as to the date, but about that date, I know. I suppose that is the correct date, yes.

Q. Was there a line-up before the land office for some time prior to that day? A. Yes.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

Mr. GORDON.—Q. How long before the opening of the land office did that line begin to form?

Mr. TANNAHILL.—Allow us the same objection to all of this class of testimony.

(Testimony of Joseph M. Molloy.)

Mr. GORDON.—Q. Answer the question.

A. Oh, I think a week or ten days, or such a matter.

Q. Do you remember who formed that line-up?

A. No, I don't think I can.

Q. Well, I hand you a list. I wish you would look at that. [1790—1460]

I will ask you how the persons that were in that line-up stood in the line and how their filings were received at the land office on the morning of the 25th of April, when the land office was opened?

Mr. TANNAHILL.—The same objection.

A. They were formed in line one behind the other, and the first one in line was filed first.

Q. Who was the first one in line?

A. The first person written there is Jackson O'Keefe; that would be the first one here. Charles W. Taylor, Joseph H. Prentice, Edgar J. Taylor, Edgar H. Dammarell, George H. Kester, Eugene H. Hopper, Edith A. Hopper, Guy L. Wilson, Edna P. Kester, Frances A. Justice, Fred E. Justice, Elizabeth Kettenbach, Elizabeth White, William J. White, Mamie P. White, Martha E. Hallett, Daniel W. Greenberg, David S. Bingham, Albert Anderson, Walter E. Daggett, John R. McConnell, Warren Lawrence, Hattie Rowland, William McMillan, James E. Hood, John M. McLellan, Frank W. Cadwell, Charles B. Crane, Nathan A. Egbert, Dudley J. Gallagher, Ernest I. Leboutillier, George W. Reed, Dennis J. Grant, Otto Green, Frank F. Finks, Edward J. Broderick, Fred W. Crane, William W.

(Testimony of Joseph M. Molloy.)

Felter, Sidney Eberley, and Edward Kitts.

Q. Mr. Molloy, can you state whether or not there were any conflicts in the description of any of the entrymen who filed on that occasion?

Mr. TANNAHILL.—The same objection.

A. I think there was conflicts in one or two instances.

Mr. GORDON.—Q. Do you remember which they were?

A. I couldn't say now; I think the records would show.

Q. Do you remember, during the period some time between 1903 and 1905 or 1906, whether or not Mr. Clarence W. Robnett got from you at the land office blank forms of final proof papers?

A. Yes, he did, some time during that period.
[1791—1461]

Q. Do you remember whether he got them on one occasion or on a number of occasions?

A. I think more than once, yes, several times, I think.

Q. I said blanks. Do you know whether they were blanks, or did he borrow blank final proof papers and some that had been filled out also?

A. The blanks, you understand, were those printed questions?

Q. Yes. A. Yes, that is what he got.

Q. Did he ever get any that the questions had been answered on?

A. I don't remember as to that now.

(Testimony of Joseph M. Molloy.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Molloy, there was some people who stood in line that were unable to get claims, were there not, on the 25th of April?

A. Well, sir, I couldn't say now whether there was or not.

Q. There might have been? A. Yes.

Q. There were some timber and stone filings that were rejected on that day for various causes, some of them being because they conflicted with other filings that had previously been made, were there not? A. I think so.

Q. I will ask you if you remember the name of Edwin Bliss and Grace W. Greeley and Laura C. Burch, Lee B. Strasberg, Reeding Smalling, Ralph H. Chapman, Lee Pickering, and Abram Adams?

A. I remember Chapman, but as to the others I don't remember about them; the records will show.

Q. I hand you this list and let you examine it, which list appears to have been taken from the land office records, and see if that will refresh your memory as to the rejected applications on that day?

A. No; outside of Chapman I don't remember about the others.

Mr. TANNAHILL.—That is all. [1792—1462]

[**Testimony of Edward C. Smith, for Complainant
(Recalled).**]

EDWARD C. SMITH, upon being recalled as a witness on behalf of the complainant, testified as follows:

(Testimony of Edward C. Smith.)

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Smith, have you the individual depositor's ledger of the Idaho Trust Company? A. Yes, sir.

Q. I will ask you to turn to page 273 and read what appears on that page.

A. Account headed Kester and Kettenbach trust account, transferred from page 300. 1909, February 13th, \$657.42.

Q. That means \$657.42, was that an overdraft?

A. Yes, sir.

Q. What is the next item?

A. February 16th, interest on overdraft \$5.30.

Q. That increases the overdraft to what?

A. \$662.72.

Q. What is underneath that? How does that read? A. Kettenbach and Kettenbach.

Q. What is the next item,—116?

A. 116, G. K. P.?

Q. Yes. A. \$41.42 deposit.

Q. What is the next one?

A. \$7.16, W. F. K. deposit \$289.94, 1-2.

Q. That is one-half, that one-two?

A. F. W. K., deposit \$331.36.

Q. Turn to page 300 and see what that is.

Mr. BABB.—What dates are these?

Mr. GORDON.—The 16th of February.

Mr. BABB.—What year? [1793—1463]

WITNESS.—1909.

Mr. BABB.—Then I object to this matter as im-

(Testimony of Edward C. Smith.)

material and outside the issues, and move to strike it out.

Mr. GORDON.—Turn to page 300. That is all I want.

Now, did you bring those items that I asked for?

A. Note items?

Q. Yes.

A. Yes, sir. Now, before we start on these notes, I would like to be corrected on my former testimony in two instances. I find in checking up that I made an error. I find one note that I didn't report this morning or before, of Naylor & Norlin, upon which Kester was the guarantor. I didn't report that this morning; I overlooked it.

Q. Was that all? A. No; the next one—

Mr. BABB.—What was that note? What was the amount and date?

A. It is \$8,000.00, dated December 30, 1909.

Mr. GORDON.—Q. What was the other one?

Mr. BABB.—Who was it payable to?

WITNESS.—Payable to the Idaho Trust Company.

Mr. GORDON.—Q. What is the other one?

A. The other was in regard to my statement on the William F. Kettenbach note. Now, I find in my list the note that was marked paid the same date that note was made, consequently I assume that that was perhaps a renewal or part of it was a renewal; I told you it wasn't a renewal.

Mr. BABB.—What is this?

WITNESS.—William F. Kettenbach note, dated

(Testimony of Edward C. Smith.)

February 5, 1910.

Mr. BABB.—And the amount? [1794—1464]

WITNESS.—The amount is \$9,544.71.

Mr. GORDON.—Q. Where is the book that shows that transaction?

A. I have it on my list here.

Q. I want the book; I don't want the list.

A. All right. I will give you that too. There is a note of \$4,579.00; it was marked paid on February 5, 1910. That, you will notice, is the same date as this note.

Q. Yes. A. So I assumed that that—

Q. This note is 5607? A. Number, yes.

Q. Now, when a note is renewed don't you give it the same number?

A. Oh, no, no, sir; decidedly not.

Q. I understood you to say this \$9,544.71 note was for an entirely different transaction and had nothing to do with any of the other notes. Now, what was it that suggested to you to make that statement?

A. This morning?

Q. This morning and last night too.

A. Because I thought it was true.

Q. What did you think that \$9,544.00 note was for? What was it that you had in your mind and said you had just brought it along so that you would have all the notes, and that it had nothing to do with any former note?

A. I thought so because I knew practically what it was given for.

Q. Do I understand that that was to take up a note

(Testimony of Edward C. Smith.)

of \$4,579.00 and then more money was advanced?

A. Well, I can't say positively, but I assume it was to take up this note, by reason of the note bearing the same date that this was marked paid.

Q. Might not that other note have been paid by check or in cash? [1795—1465] A. Oh, yes.

Q. You have no individual recollection as to whether or not— A. No, sir.

Q. This \$4,579.00 note that was paid on the same date that this \$9,544.00 note was given, had they any connection with each other other than that one was given the day the other was paid?

A. Well, yes. I have,—yes, I know,—I am satisfied now that that, this note here was included in that.

Q. What has satisfied you of that?

A. Well, I have seen a statement of that.

Q. Where did you see the statement?

A. Well, I found the statement among our papers.

Q. Where is the statement?

A. I don't know whether I have got it in my pocket here or not. Perhaps I have got it here. Shall I see?

Q. Please.

(The witness thereupon handed a paper to Mr. Gordon.)

Q. What is this headed,—statement of C. C. & H. assets?

A. Colby, Corey & Howell, a lot of property he bought, purchased.

Q. Who made up this statement?

(Testimony of Edward C. Smith.)

A. I don't know.

Q. This is a correct statement, is it?

A. I don't know that.

Q. It is the one that you got your information from as to this note, is it not? A. Yes, sir.

Q. What is this first payment, what does it mean, "William," William F. Kettenbach?

A. William C. Lawrence,—on the second line there.

Q. Then, this note was given in settlement of some Colby, Corey, [1796—1466] & Howell obligations, was it?

A. Yes; he bought a lot of Colby, Corey & Howell property.

Q. And wasn't any security given for this note and some other transaction? A. No, sir.

Q. You are sure of that?

A. I believe so, unless you would consider that it is considered under our trust agreement.

Q. Do you know when this statement was made out? A. No, I do not.

Q. Where did you find it?

A. I found it among our papers and files.

Mr. GORDON.—I will ask that that memorandum be copied into the record.

The following is a copy of said memorandum:

(Testimony of Edward C. Smith.)

"STATEMENT C. C. & H. ASSETS.

09.	1909.		
- 9. Original purchase.....	18,000.00	6- 1. 1st payment Wm. C. Lawrence	29,866.50
- 3. Cavanaugh Lands.....	7,680.10	7-31. 2nd payment Wm. C. Lawrence	1,000.
- 3. Heason notes and Timber	7,124.45	1910.	
- 3. Exp. Note Cr. on Mill Account	203.35	1- 6. By Eugene Cox on desk.	20.
-17. Pd. on I. T. Co. note	1,000	1-11. By Davis on wagon.....	30.
Interest on			
18,000	348.45		
- 2. Jas. E. Babb, bills.....	159.55		
-31. Abstract Bill	9.60		
797-1467]			
-21. Int. on 4,000 note			
Bal. 18,000 note	91.55		
-21. Ck. cover O/D Mill a/c.	250.		
-24. 3d Sewer Assmt. city property	316.10		
-30. Note & Int. I. T. Co., on 200 ft. frontage.....	4,579.00		
-31. Ck. cover O/D Mill a/c.	100.		
010.			
- 3. 1909 taxes, city lots...	303.46		
- 5. Int. on investment over and above receipts...	295.60	Bal.	9,544.71
	40,461.21		40,461.21

February 5, 1910."

Mr. GORDON.—Q. Now, I ask that you give me the notes that the notes that you brought yesterday were in renewal of. Have you brought them or a record of them?

A. I have what I believe is a correct record of them here.

Q. And you have made that out from these books?

A. Yes, sir.

Q. Let me look at them, please.

(Testimony of Edward C. Smith.)

(The witness thereupon handed a paper to Mr. Gordon.)

Q. This is a correct statement made from these books? A. Just as near as I can make it.

Q. Did you make that out yourself?

A. No, sir; we worked together.

Q. Who wrote that out? Did you write that out?
[1798—1468] A. No; the bookkeeper.

Q. That is made from these books, is it?

A. Yes, sir.

Cross-examination.

(By Mr. BABB.)

Q. This note for \$9,500.00, given by W. F. Kettenbach, which you referred to, I will ask you to state whether you have checked out in detail the origins of that note. A. I found a statement.

Q. Aside from the statement you referred to have you made an investigation to trace the origin of that?

A. No.

Q. You haven't had an opportunity to do so, have you, since the matter came up? A. No, sir.

Q. From that statement you find you assume that there was prior indebtedness that that was a renewal of, either wholly or in part? A. Yes, sir.

Q. That statement was pinned to this note, was it not, or filed with it, was it not?

A. It was in the files.

Q. With the note?

A. In the same file, yes, sir.

Q. You were laboring under the preliminary impression that the note was in some way connected

(Testimony of Edward C. Smith.)

with the purchase W. F. Kettenbach made of property from the Colby, Coryell, Howell Lumber Company, were you not? A. Yes, sir.

Q. That purchase he made was made about March, 1909, was it not? A. I believe so. [1799—1469]

Q. So if your impression was correct as to the connection between this note and that purchase it is possible that the indebtedness was created at the time of the purchase?

A. It is possible, yes, sir.

Q. The items on the statement you have handed in here, which you say you found filed with that note, appear to be items of prior existing indebtedness from W. F. Kettenbach?

A. Appear,—I should judge so from the appearance of the statement, yes, sir.

Q. And the balance of that indebtedness is shown by this statement to have been precisely the amount of this note? A. Yes, sir.

Q. Now, you were asked this morning a leading question whether that note had any connection with the trust instrument of July, 1907, that was offered in evidence here, evidencing the trusts on which the Idaho Trust Company held the property conveyed to it by deed of July 6, 1907. I will ask you to state what bearing that trust instrument has on this note of ninety-five hundred and some dollars?

A. Well, I believe it secures it.

Q. It is a blanket security for all the indebtedness then existing or thereafter incurred?

A. Yes, sir.

(Testimony of Edward C. Smith.)

Q. Your statement in your testimony in chief that the note had nothing to do with these transactions here was that your impression was that it pertained to the Colby, Coryell & Howell Lumber Company purchase and not to any of the transactions involved in this case? A. Yes, sir.

Q. And that was the reason you was answering it that way? A. Yes, sir.

Q. You stated that you knew in a general way about the convictions of W. F. Kettenbach and possibly some others, Dwyer, in the [1800—1470] United States District Court in this state some few years ago. I will ask you to state whether you ever saw any of those indictments on which they were convicted. A. I never did.

Q. Do you, or did you at any time know what particular entries were involved in the charges made, land entries involved in the charges made in those indictments?

A. I don't remember that I ever did, although I have heard a good deal about them; possibly I have.

Q. Could you ever at any time, if you had been interrogated, have answered to what particular entry or entries were involved in the charges made?

A. I don't suppose I ever could.

Q. You did not know then, at the time of the delivery of this deed of July 6th, 1907, to Idaho Trust Company, conveying real estate, that any of the properties included in that deed were properties that were involved in the charges made in any of those indictments referred to? A. No, sir.

(Testimony of Edward C. Smith.)

Q. You had never heard that any of those properties were so involved? A. No, sir.

Q. In fact, it was your impression that those properties were not involved, was it not?

A. Yes, sir.

Q. That was your understanding? A. Yes, sir.

Q. This indebtedness you have testified about here, the note you have identified, the account you have referred to, I will ask you to state whether that was real indebtedness, representing an actual money obligation, or whether those papers were simply mere forms? [1801—1471] A. Those?

Q. All these notes and evidences of indebtedness.

A. Well, they were actual indebtedness.

Q. Represented actual transfers of money?

A. Or renewals.

Q. Loans and renewals of loans? A. Yes, sir.

Q. I will ask you to examine and state what, if any, loan the Idaho Trust Company made to George H. Kester at or about the time of the execution of said conveyance to Idaho Trust Company by Kettenbach and Kester July 6, 1907.

A. If I can get those statements—

Q. And the trust agreement evidencing the trust on which that conveyance was held. You may state in the same connection and answer in the same question, what prior indebtedness the said George H. Kester was owing to Idaho Trust Company at that time, if any. The question is prior to the execution of those instruments, if any.

A. I don't believe I can give you that, Mr. Babb, at this time.

(Testimony of Edward C. Smith.)

Q. I would like to have you look that up and answer as to that, the indebtedness existing at the time of the execution of those instruments of George H. Kester and the indebtedness incurred on or about the time of the execution of those instruments. Explain what the consideration was, what it consisted of, and the nature of it.

A. On June 26, 1907, Kester owed a note of \$5,000.00.

Q. What date was that note?

A. June 26, 1907.

Q. When was it payable, and the rate of interest?

A. It was dated June 26, 1907, demand note, eight per cent. interest, \$5,000.00.

Q. What was the consideration of that? [1802—1472]

A. \$5,000.00 was the consideration.

Q. What was it, a loan or a sale? A. A loan.

Q. It was actually made, was it, a loan of that amount of money actually made to him?

A. It was either made to him, or this was a renewal of another note.

Q. On which an actual loan was made?

A. Yes, sir.

Q. What indebtedness, if any, did he incur to Idaho Trust Company right soon thereafter?

A. On July 9, 1907, he gave the Idaho Trust Company a note for \$25,000.00 at eight per cent. interest.

Q. Payable when?

A. Payable January 9th, 1908.

Q. What was the consideration of that note?

(Testimony of Edward C. Smith.)

A. \$25,000.00.

Q. Well, what made up that note? Did that take up that \$5,000.00 note?

A. I believe so. It was given the same date the other one was marked paid.

Mr. GORDON.—Wasn't that other note July 26, 1907?

Mr. BABB.—June 26th.

Q. Then, the additional \$20,000.00 and this \$5,000.00 note, what was that, what did that consist of, what was the consideration?

A. I haven't a memorandum of what that consisted of.

Q. Have you anything here from which you can ascertain?

A. No, sir; I don't believe I have. I am satisfied, though, that that \$5,000.00 was included in this \$25,000.00 note. [1803—1473]

Q. Then, what was the balance of that \$25,000.00 note? What made it up, besides the \$5,000.00 that was renewed?

(No answer.)

Q. I will ask you to state how long will it take you to investigate and find out about that.

A. Perhaps I can tell here in a few minutes; I will see.

Q. Have you got the minute-book here that you had here last night?

A. Yes, sir; I will get it.

Q. You go on, and I will examine this. Look at the minutes of the meeting of the board of directors

(Testimony of Edward C. Smith.)

of Idaho Trust Company, September 9th, 1907, in which is recorded in full the trust instrument of July 6th, 1907, and state what loans are referred to in the following entry: "Upon motion of O. A. Kjos, seconded, put to a vote and carried, a loan of \$25,000.00 to George H. Kester was approved." What loan was that?

A. Mr. Babb, that is the same loan, I think, without any doubt.

Q. The same as the \$25,000.00 note of July 9th, 1907?

A. Yes, sir; on July 8th, 1907, we had a meeting of the directors, and that note was made on the day following, July 9th, and we didn't have another meeting of the directors until September 9th, and consequently that is the same one.

Q. And that refers to the note for \$25,000.00 of July 9th, 1907? A. Yes, sir.

Q. And that note included in it a renewal of a prior \$5,000.00 note? A. I believe so.

Q. And then the balance remaining, \$20,000.00, what was that? Was that a present advance made at that time?

A. It was an advance, yes, sir.

Q. It wasn't prior? [1804—1474]

A. Well, I don't know, Mr. Babb; I can't say.

Q. You haven't looked it up? A. No, sir.

Q. I wish you would verify that there so that we can dispose of that while we are here.

A. I find here on the same date a demand certificate account, a large amount, which would signify

(Testimony of Edward C. Smith.)

that there was some large transaction that day, and I am satisfied that in addition to that \$5,000.00 we issued a demand certificate which was for the balance.

Q. What balance, what amount?

A. Well, I haven't got the detailed amount here.

Q. What did you mean by balance?

A. The balance of the note over and above the \$5,000.00.

Q. That was for \$20,000.00? A. Yes, sir.

Q. What was it they did about the \$20,000.00?

A. Issued our demand certificate of deposit.

Q. To whom?

A. Well, I haven't got the detailed record of it, Mr. Babb.

Q. You issued one for that amount but you haven't got the record there to show to whom?

A. Yes, sir.

Q. Well, you have got the book down to the office that will show that? A. Yes, sir.

Q. You have got a machine out here?

A. Yes, sir.

Q. It won't take you but five minutes to go down there and get it, will it?

A. No, sir. [1805—1475]

Mr. GORDON.—Oh, put that in some other time. What's the use of putting your case in this way?

Mr. BABB.—I would like to have that.

Mr. GORDON.—Well, he is the secretary of one of the defendants whom you represent, and if you want to put your case in this way I will ask to have it show on the record that it isn't proper cross-ex-

(Testimony of Edward C. Smith.)

amination and ask that the defense put their case in at their own expense.

Mr. BABB.—He was asked about it in chief.

Mr. GORDON.—I asked him nothing about the matter he is referring to there in chief. I asked him about three notes, and the renewal of them, and he couldn't tell me, and he can't tell you.

Mr. BABB.—Couldn't you phone somebody and have them bring them up? Here is Mr. Turnbull.

WITNESS.—He would have to walk down.

Mr. BABB.—Well, he would be back before we get through. Let him go.

WITNESS.—I have no doubt but what we can locate that by spending time enough.

Mr. BABB.—Yes, but we want to do it now. Where is that list of stockholders of the Idaho Trust Company that was handed in here this morning?

Q. If I understood your direct examination, you stated that a certain number of shares of the Lewiston National Bank were transferred to Idaho Trust Company? A. Yes, sir.

Q. Something like 900 or 910?

A. 900 shares.

Q. The transfer of those shares to Idaho Trust Company was made by certain shareholders of the Lewiston National Bank? [1806—1476]

A. Yes, sir.

Q. Instead of Idaho Trust Company itself, as a corporate entity, paying the share holders of the Lewiston National Bank for making those transfers to it, the share holders of Idaho Trust Company

(Testimony of Edward C. Smith.)

paid the Lewiston National Bank share holders for the transfers they made to Idaho Trust Company by transferring to the share holders of the Lewiston National Bank a certain portion of the stock held by the share holders of Idaho Trust Company?

A. Yes, sir.

Q. That was the nature of that transaction, was it not, briefly stated? A. Yes, sir.

Q. Idaho Trust Company didn't increase its capital stock, and issued some stock to the share holders of the Lewiston National Bank? A. No.

Q. Nor did it issue any stock to them that it owned? A. No, sir.

Q. It was an issue for the purpose of getting the title of the stock of the Lewiston National Bank transferred to Idaho Trust Company?

A. Yes, sir.

Q. Now, you stated that the share holders of Idaho Trust Company decreased their holdings.

A. Yes, sir.

Q. Sufficiently to compensate the share holders of the Lewiston National Bank for the transfer they made to the Idaho Trust Company? A. Yes, sir.

Q. You were asked then how it happened that it shows on this list of share holdings in the Idaho Trust Company that the share holdings of some of the shareholders increased by reason of that transaction rather than decreased? [1807—1477]

A. Yes, sir.

Q. As you had stated? A. Yes, sir.

Q. Now, how does it happen that some of those

(Testimony of Edward C. Smith.)

holdings increased? Is it not a fact that some of these shareholders in Idaho Trust Company were also stockholders in the Lewiston National Bank?

A. Yes, sir.

Q. And entitled therefore to a transfer of additional Idaho Trust Company stock?

A. Yes, sir.

Q. Is not that the way in which some of these holdings in Idaho Trust Company were increased rather than decreased by that transaction?

A. Yes, sir.

Q. At any rate the transaction was carried through and closed up in the way I have briefly described here?

A. Yes, sir.

Q. Between the shareholders of the two institutions?

A. Yes, sir.

Q. Now, I notice this list you handed in here of stock ownership Idaho Trust Company, entitled that, one column is headed before January 7, 1908, is it?

A. Yes, sir.

Q. And the other is after January 7, 1908? Is that it?

A. Well, on.

Mr. GORDON.—He changed it from “after” to “on.”

WITNESS.—I changed it from “after” to “on.”

Mr. BABB.—Q. This list you brought in here this morning was made up [1808—1478] pretty hastily, was it not?

A. Yes, sir.

Q. Could you be assured that that is absolutely correct in detail?

A. I think so.

Q. You think it is?

A. It proves out.

(Testimony of Edward C. Smith.)

Q. I didn't know whether you had had time to verify it sufficiently. You don't assume to state, though, that that represents the present holding—

A. Oh, no.

Q. Of stock in the Idaho Trust Company?

A. No, sir.

Q. What was the object of that arrangement for transferring shares between the shareholders of those two corporations?

A. To effect a consolidation of the two institutions.

Q. What was the object of doing that, I say?

A. For economy of operation and convenience generally in handling the business, the advantages that would go with a consolidation, the added advantage of a National Bank and also a Trust Company.

Q. With practically the expense of management of one institution instead of the expense of two?

A. Practically that saving, yes, sir.

Q. Now, there may have been other transactions about the time this arrangement was perfected that affected in some respects these changes in ownerships other than this particular transaction of transfer itself, might there or might there not?

A. I don't think there was anything at that time.

Q. You don't remember now whether there was or not? A. No, sir.

Q. You haven't investigated to find out whether there was or not [1809—1479] other transactions?

A. No, sir.

Q. Some person may or may not actually have ac-

(Testimony of Edward C. Smith.)

quired some additional shares at that time, so far as you can state now, otherwise than by reason of this transaction of transfer? You haven't investigated since this came up here to find out whether that is so or not, have you? A. No, sir.

Mr. BABB.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Smith, you made the assertion that those notes represented a real indebtedness. Do you know what they represented, any of them, other than that the notes are found in the files of your company?

A. I know we don't make loans unless we get—unless it is for indebtedness.

Q. That is not what I am asking you. I mean, did you have anything to do personally with any loan that has been referred to here?

A. Oh, I think Mr. Kettenbach had the handling, did the detail work upon them.

Q. And you knew nothing about them?

A. Well, I didn't see that—

Q. Were you consulted about them?

(No answer.)

Q. You know whether you were or not.

A. No, I can't remember about that.

Q. Now, you stated that you couldn't tell of a piece of property that was involved or mentioned in any of the indictments, did you not?

A. I believe so.

Q. Hadn't you ever heard the claims and entries

(Testimony of Edward C. Smith.)

that had been [1810—1480] talked over in those indictments?

A. I certainly heard a good deal of talk about them.

Q. Didn't you know who the witnesses were, a number of them, from Lewiston here?

A. I knew some of the witnesses here; yes, sir.

Q. Didn't you know that their claims and entries were involved in those indictments?

A. I had no way of connecting their claims up with any claims that were included in this trust agreement.

Q. And you didn't know whether they were included in the trust agreement or not, did you?

A. I certainly thought they were not included in it.

Q. Answer my question, please. You didn't know whether they were or not, did you? (No answer.)

Q. Can't you answer?

A. (Pause.) I don't remember that I knew.

Q. I say you don't know whether they were or not?

(No answer.)

Q. You surely can answer that?

A. It is pretty hard to answer the question the way you are putting it. We certainly felt that there was no claims involved in that trust agreement.

Q. Did you ever make any inquiry to find out whether they were or not?

A. I never did personally, no, sir.

Q. Is there any claim mentioned in that trust agreement or any description of any property in that trust agreement?

A. Well, there is a deed that goes with it that there is a description in. [1811—1481]

(Testimony of Edward C. Smith.)

Q. You had nothing to do with the making of that trust agreement, did you?

A. I believe Mr. Kettenbach made it.

Q. Where did you get the information that none of the entries that were involved in any of the criminal prosecutions were not in that trust agreement, deed?

(No answer.)

Q. Please answer.

A. Well, we talked the matter over, and it was pretty well—pretty generally understood among us, among our crowd, that they were not involved in it.

Q. Who did you talk it over with?

A. I think Mr. Frank Kettenbach.

Q. Did he tell you there weren't any of them involved in there? A. I believe he did.

Q. Have you any personal knowledge what any note that you have mentioned was given to secure, whether it was old indebtedness or new indebtedness, or one you had taken over from the Lewiston National Bank, or some outside transaction?

A. I have only records to show.

Q. I asked you if you had any personal knowledge.

A. No, I can't say that I have.

Q. You know nothing personally about the transactions? A. Only from records.

Q. And your records only show that one day a note was paid and the same day, if another note was given, you would assume that it was given as a renewal of that, is that all? A. Yes, sir.

Q. Now, this \$20,000.00 note that you have referred to here in this resolution. You don't know what that

(Testimony of Edward C. Smith.)

note was given for, do you? You don't know whether it was some old indebtedness of the Lewiston [1812—1482] National Bank, or whether it was a new loan, or whether it was to take up a number of small notes or not, do you?

A. No, I don't believe I do. I have been looking to try to find that information for you.

Q. And there is nothing in your books to show what that was for, other than that at the same time a note was given, is that correct?

A. Well, there is a possibility of our having something to show what it was given for; sometimes we make a notation of renewal, but not always.

Q. As I understand, this consolidation was not an increase of the capital stock of the Idaho Trust Company? A. No, sir.

Q. But merely an increase of the value of the stock, is that right? A. Yes, sir.

Q. You spoke about the Trust Company issuing a demand certificate of deposit on the 6th or 7th of July, I think it was, in the sum of \$20,000.00 or \$25,000.00. Which was correct?

A. If you will let me refer to that—

Q. Yes. Do you know to whom that was issued?

Mr. BABB.—He refers to that (handing witness book); I don't know whether it will help you any.

A. Well, we are not any better off than we were before here on this.

Mr. GORDON.—Did you answer?

WITNESS.—No. Our certificate of deposit book shows that we paid the Lewiston National Bank, on

(Testimony of Edward C. Smith.)

the 9th day of July, \$22,335.56, which is marked clear. That means that we paid our balance that day balance clear. [1813—1483]

Q. Does that mean that George H. Kester paid for a certificate of deposit? A. No, not necessarily.

Q. You spoke of a resolution referring to a loan, approving a loan of George H. Kester's. You do not know whether that approval referred to this \$25,000.00 loan of George H. Kester's, or some other, other than that just about that time a loan was consummated?

A. No; it referred to that particular loan.

Q. How do you know?

A. Why, I know it from the records.

Q. Didn't you say here, in response to Mr. Babb's question, that you didn't have any distinct recollection of it other than that it must have been?

A. Well, I say now that it must have been.

Q. But you have no individual recollection of the transaction at all?

A. Oh, I can't remember the transaction; no, sir.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BABB.)

Q. You haven't been able, since I last made inquiry of you, to get the records which would enable you to testify concerning the \$20,000.00 of that \$25,000.00 note given by Kester, of July 9th, 1907, have you? A. Not positively.

Q. I will ask you to investigate that matter, and you may be called again some time for evidence in the

(Testimony of Edward C. Smith.)

future in this case, or you may not, so that you can testify if you are so called.

A. I am satisfied that I can furnish it. [1814—1484]

Q. You think you can find it, do you?

A. Yes, sir, I do.

Q. All right. I will ask you to look it up and I will call you some other time. That is all.

Mr. GORDON.—Now, we have put in all that we have here, or that we can get here at this time, with the exception of the three or four witnesses that I gave Mr. Tannahill the names of. One of them was Lon. Bishop, and one was Charles Smith, one was Theo. Fohl, Charles Jansen, James C. Evans, and S. P. Fitzgerald, and I assume that it may be agreed between us that after we have taken all our other testimony around the circuit, that when the defense gets ready to put in its testimony that we be notified of when that day will be, and we will put in this testimony on the day before. And I assume that they will also let me put in any other little thing that I may have overlooked, any minor fact, at the same time. In other words, when we close at Boise I am going to rest my case with the exception of the one day that I will have here for just such matters as we have referred to.

Mr. BABB.—Yes.

Mr. TANNAHILL.—Yes.

The SPECIAL EXAMINER.—That will conclude the hearing here for the present, then.

The hearing was thereupon adjourned at Lewiston,

Idaho, to be resumed at Spokane, Washington, at ten o'clock A. M., Monday, September 12, 1910, in the Grand Jury room of the Government building at said Spokane, State of Washington. [1815—1485]

**[Proceedings Had at Spokane, Washington,
September 12, 1910.]**

On Monday, September 12, 1910, at 10 o'clock A. M., the hearing was resumed, in the Grand Jury room of the Government Building at Spokane, Washington, pursuant to adjournment.

By agreement of counsel, an adjournment was thereupon taken until 2 o'clock P. M.

At 2 o'clock P. M. the hearing was resumed, and the following proceedings were had, to wit:

It is stipulated by and between the parties hereto, in open court, that Edward M. Lewis, of Lewiston, Idaho, made a timber and stone land filing in the land office at Lewiston, Idaho, on the 26th day of October, 1904, and filed his sworn statement and other filing papers on that date, for the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39 north of range 5 east, Boise meridian; that the said Edward M. Lewis made his final proof on said entry on January 20, 1905, and was cross-examined at that time, and that the receiver's receipt and register's certificate were issued to the said Edward M. Lewis for the said described tract of land on January 20, 1905.

[Testimony of Edward M. Lewis, for Complainant.]

EDWARD M. LEWIS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward M. Lewis?

A. Yes, sir.

Q. Where do you reside, Mr. Lewis? [1816—
1486] A. I reside at Spokane.

Q. Where did you reside in October, 1904?

A. Lewiston.

Q. Idaho? A. Yes, sir.

Q. What was your occupation at that time?

A. Common laborer.

Q. What was your salary at that time?

A. Well, about two and a half a day.

Q. Was it always that much, or sometimes less?

A. Well, it always was city work, you know.

Q. Are you a brother of Hiram F. Lewis?

A. Yes, sir.

Q. Do you remember of taking up a timber claim for the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, in township 39 north of range 5 east, Boise meridian, on October 26, 1904?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim, on the ground that it is incompetent, irrelevant and immaterial, no entry of the witness being involved in any of these proceedings.

(Testimony of Edward M. Lewis.)

Mr. GORDON.—Q. Do you remember taking up a claim on that date, of that piece of property?

A. Yes, sir.

Q. Now, will you state whether or not you had an arrangement with anybody for the taking up of that claim? If so—

Mr. TANNAHILL.—It is understood that the defendants' objection goes to all of the evidence of the witness relative to his taking up a timber claim, without the necessity of repeating it. [1817—1487]

The SPECIAL EXAMINER.—Yes; the stenographer will just note that.

Mr. GORDON.—Q. State all you can remember in connection with it, Mr. Lewis.

A. I don't know anything that transpired only between my brother and myself.

Q. That is Hiram Lewis? A. Yes.

Q. Now, state what transpired between you two.

Mr. TANNAHILL.—The defendants severally object to any conversation between the witness and his brother, upon the ground that it was not in the presence of either of the defendants, and upon the ground that it is hearsay, and the defendants cannot be bound by any statement of the witness relative to what his brother may have said, and especially in view of the fact that his brother has testified that there was no prior agreement between him and either of the defendants, and nothing wrong in regard to his acquiring timber and stone land claims.

A. Well, he approached me and told me I had a chance to take up a timber claim, and told me who I

(Testimony of Edward M. Lewis.)

was to go to the timber with, and there was nothing said in regard to what I was to do, or anything, with the claim at the time.

Mr. GORDON.—Q. Now, were you working in Lewiston at that time?

A. Yes—well, I was working down about two miles from Lewiston, right down the river.

Q. Did this conversation that you refer to with your brother take place in Lewiston, or down the river?

A. Down the river; he came down there for me.

Q. Did you have the money with which to take up a timber claim then? A. No, sir. [1818—1488]

Q. State, as near as you can, the first thing your brother said to you relative to this timber claim; I can't, of course, expect you to repeat the words, but just as near as you can remember at this time.

Mr. TANNAHILL.—Allow us the same objection.

A. Well, he told me that I was to take up this timber claim, and he said that he wanted me to go on a certain date, that Dwyer was going up then, and I was to go with him, and he told me to leave everything with him, that he would see that it was all right, and he never said anything, though, in regard as to what I was to do or anything about it, only go up there and get the claim, that I had a chance to get me a claim.

Q. Now, how long was this before the date was set for you to go to view the claim?

A. It was only about two days.

Q. And did you go on that day, or was there a delay? A. No; we went that day.

(Testimony of Edward M. Lewis.)

Q. Did he give you instructions where to go and who to see?

A. No, nothing; only he told me to go to Dwyer.

Q. Did you know Dwyer at that time? A. No.

Q. What Dwyer is this? A. William Dwyer.

Q. Where did you find Mr. Dwyer?

A. There in Lewiston.

Q. Did you go and look him up?

A. My brother introduced me to him.

Q. What part of Lewiston did you meet him?

A. I met him there at the Raymond House.

Q. Did you and Mr. Dwyer go off together?

A. No, sir. [1819—1489]

Q. Now, state what happened.

A. Well, I went right up to the house; this was in the afternoon about four o'clock that he came down there after me, and after I had seen Mr. Dwyer he said we would be ready to take the train that morning.

Q. The next morning?

A. Yes; and go to Greer, and from there we had to go with saddle-horses to where the claim was. And so we went that morning as far as Greer and took saddle-horses to go from there on in.

Q. How many days were you away from Lewiston to view this land?

A. I believe we was gone three days altogether.

Q. Did you pay any of the expense of that trip?

A. No, sir.

Q. Who paid the expenses? A. Mr. Dwyer.

Q. And how long after you returned to Lewiston,

(Testimony of Edward M. Lewis.)

after going to the land, did you make your filing?

A. Well, I can't say just how long it was; it wasn't only a few days, though.

Q. Where did you get your filing papers?

A. In the land office,—Mr. Mullen's office.

Q. Who was Mr. Mullen? Is he an attorney there at Lewiston? A. Yes; he was an attorney.

Q. How did you happen to go to Mr. Mullen's office?

A. I was requested to go there by my brother.

Q. Did you get your filing papers made out there?

A. Yes.

Q. Did you give Mr. Mullen the description of the land?

A. No; he already had the description of it.

Q. Was anyone there besides yourself? [1820—1490] A. No, sir.

Q. Do you remember who named the witnesses that you were to have at final proof?

A. Why, Mr. Dwyer, I think, named the witnesses.

Q. Did you pay Mr. Mullen a fee for his services in preparing those papers? A. No, sir.

Q. Did you go to the land office alone to file them, or with some one?

A. No, sir; I went there with Mr. Mullen.

Q. Did you pay a filing fee at the land office?

A. Yes, sir.

Q. Where did you get the money with which to pay that? A. I got it from my brother.

Q. Do you remember how much it was you paid?

A. I don't just remember now.

(Testimony of Edward M. Lewis.)

Q. Now, before you filed was anything said to anyone as to where you would get the money to take up this claim?

A. No, there wasn't, any more than my brother said he would see that I got the money.

Q. Then do you remember the making of your final proof? A. Yes, sir.

Q. From whom did you get the money to make your proof? A. Also from my brother.

Q. How much did you get from him, as near as you can remember?

A. About \$40.00, I think, was what he gave me.

Q. Where did you get the rest of it?

A. The rest I got over at the bank, the Idaho Trust.

Q. Did you have the money in the bank? [1821—1491] A. No, sir.

Q. How did you get it out of the Idaho Trust Company then?

A. I don't know; I got it through instructions from my brother.

Q. What did he tell you to do?

A. He told me to go over to the bank and get the rest of the money.

Q. What did you have?

A. A check—he issued a check on the bank.

Q. Was it his check? A. Yes, sir.

Q. Do you know who put that money there?

A. No, sir.

Q. Did you pay a location fee? A. No, sir.

Q. Did you pay for a relinquishment of the land that you filed on? A. No, sir.

(Testimony of Edward M. Lewis.)

Q. Now, between the time that you filed and the time you made proof, will you state whether or not there was a contest filed against your timber and stone entry?

A. No; the contest was filed after I had proved up on it.

Q. It was? A. Yes.

Q. And you took the money that you got from your brother on the check, and the \$40.00 that he gave you, and made your proof? A. Yes, sir.

Q. Did you have any of your own money?

A. No, sir.

Q. State whether or not you put a dollar of your own money into that transaction. A. I did not.

Q. Did you give a note for this money you got from your brother? A. No, sir. [1822—1492]

Q. Did you ever pay any interest on it?

A. No, sir.

Q. Ever promise him when you would pay it?

A. No, sir.

Q. Was anything ever said about returning that money? A. No, sir.

Q. Who notified you of the contest of your timber claim? A. Mr. Dwyer.

Q. Now, state what he said about it.

A. Well, he saw me in town there one day and told me that a party had filed a contest on forty acres of my timber claim, and wanted me to fight it, said it was worth looking after.

Q. Did he give you any instructions or directions what to do?

(Testimony of Edward M. Lewis.)

A. No; he told me he would go and hire a lawyer—he said Mr. Mullen would take the case for me, he thought, for about \$30.00.

Q. Did you follow his instructions?

A. Yes, sir.

Q. Did you go to see Mr. Mullen? A. Yes, sir.

Q. Did he represent you at the contest?

A. Yes, sir.

Q. Do you know whether or not the contestant was successful or whether you won out on it?

A. I think he won out; it was decided in his favor.

Q. And who paid Mr. Mullen?

A. I paid Mr. Mullen out of my own pocket.

Q. Were you ever reimbursed by anyone for that money that you paid Mr. Mullen?

A. Yes, sir. [1823—1493]

Q. State how that transaction occurred.

A. Well, I told my brother about it, and asked him how it come about that a contest had been filed on the claim and I had to fight it and pay out of my own pocket, and he said he would see that I got it back all right.

Q. Did you get it back? A. Yes, sir.

Q. From him? A. Yes, sir.

Q. How long after you paid the fee?

A. It was only about a week.

Q. Do you know where he got the money from?

A. No, sir.

Q. Now, did you ever dispose of this property?

A. No, sir.

Q. Have you got it yet? A. No, sir.

(Testimony of Edward M. Lewis.)

Q. Well, what did you do with the property—what became of it? A. I deeded it over to my brother.

Q. State how that transaction came about.

A. Well, my brother—he told me he wanted me to go down town with him one day at Lewiston there to deed that place over to him, the timber claim, and we went up there in an attorney's office—I just forget who it was now—and made out the deed to the place, and I turned it over to my brother.

Q. Was anything said between you and your brother further about turning it over? A. No, sir.

Q. Did he tell you whether or not it was your property or whether it was somebody else's?
[1824—1494]

A. No; he told me it didn't belong to me; that I had no right to sell it or anything.

Q. Did he tell you to whom it belonged?

A. No, sir.

Q. Mention anybody else's name? Did he tell you to whom did it belong? State all you can that he told you at that time.

A. He told me, I am almost sure, that it belonged to Mr. Dwyer and that I had no right to it whatever.

Q. Did he mention anybody else's name besides Mr. Dwyer's?

A. I don't remember just at the time, but I know Mr. Dwyer, because he said I had no right to the property.

Q. Did he say whether or not Mr. Dwyer was interested with somebody else in that claim?

A. No; he didn't say anything in regard to that.

(Testimony of Edward M. Lewis.)

Q. Did he say that anybody else had an interest in that claim? A. No.

Q. Didn't mention anybody else's name?

A. No.

Q. Did he at any other time? A. Yes.

Q. When was that?

A. It was shortly after; I was talking with him and asked him if I was going to get anything else out of the timber claim, and he said no, that I had got all that was coming to me, said I had got more now than he had; he said they was his claims and he turned them over to Kester and Kettenbach and Mr. Dwyer.

Q. How much did you get out of your claim?

A. I got \$125.00.

Q. When did you get that? [1825—1495]

A. I got that on the 25th or 26th day of January, I think it was.

Q. What year?

A. Well, it was 19—I don't know now just when—04, or something like that; I know it was just two or three days before I was married.

Q. Do you remember whether it was before you made your proof, or after you made your proof?

A. It was after I made my proof.

Q. State where you got that, and from whom you received it, and what was said when you was given that money.

A. Well, I asked my brother—he told me that after I had made final proof I would get a certain piece of money out of it, and I told him that the way I was situated I would like to have it as soon as I could;

(Testimony of Edward M. Lewis.)

I was going to get married and furnish up my house, so he said he would get it for me, and the next day, I think it was, he brought it up and give it to me.

Q. How long after that was it that you made the deed? A. Oh, it was I guess six months after.

Q. Now, when you made your final proof and paid your money in the land office did they give you a final receipt for that? A. Yes, sir.

Q. What did you do with that?

A. I kept it until I deeded the property over to my brother.

Q. Then you gave that to him?

A. Then I gave it to him.

Q. Now, when you first met Mr. Dwyer, the first day you met Mr. Dwyer, before you started to the timber land, did you have any talk with him about taking up this timber claim?

A. No, sir; there was nothing said, I don't believe, at all until we got to the timber. [1826—1496]

Q. Are you sure that Mr. Dwyer didn't ask you if you didn't want to take up a timber claim?

A. No, sir.

Q. Is that your signature to that paper, Mr. Lewis? (Showing paper to witness.)

A. Yes, sir.

Q. Did you swear to that before Mr. O'Fallon?

A. Yes, sir.

Q. Now, will you look down there at the bottom of the first page and read those questions over and see whether or not that refreshes your recollection as to whether or not you had a conversation with Mr.

(Testimony of Edward M. Lewis.)

Dwyer relative to taking up a timber claim? (Handing paper to witness.) A. Yes.

Q. Did you make those statements?

A. Yes, I did.

Q. Were they the truth?

Mr. TANNAHILL.—We object to that, upon the ground that the document is the best evidence, and upon the further ground that it is an *ex parte* statement purporting to have been drawn up by some special agent, not in the presence of any of the defendants, and it is hard to tell what it might contain; these special agents have had witnesses sign everything they might write up for them. It is not proper to use these *ex parte* statements and make evidence of them.

Mr. GORDON.—Q. Do you remember, on the 31st of October, 1905, having talked with Mr. O'Fallon, Special Inspector of the land office?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. The date you swore to this affidavit? A. I don't remember. [1827—1497]

Q. You remember talking to Mr. O'Fallon, don't you? A. (Pause.) Oh, that there, you mean?

Q. Yes. A. Yes; oh, yes.

Q. That was the gentleman that you swore to this before? A. Yes, sir.

Q. Now, do you remember him asking you: "Are you the same Edward M. Lewis that, on the 26th of October, 1904, filed on the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39 north of range 5

(Testimony of Edward M. Lewis.)

east, Boise meridian?" And you answered: "Yes, sir." A. Yes, sir.

Mr. TANNAHILL.—The same objection, and on the ground that it is leading and suggestive, and tends to impeach the Government's own witness.

Mr. GORDON.—Q. Do you remember him asking you this question: "Who induced you to file upon this land?" And you answered: "Mr. Dwyer."

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. And was that the truth?

A. Yes, sir.

Q. Do you remember him asking you this question: "Had you known Dwyer previous to that time?" And you answered: "No, sir." Is that correct?

A. Yes, sir.

Q. "Where did he first mention the subject to you?

"A. There at Lewiston, on the street.

"Q. How did he broach the subject to you?
[1828—1498]

"A. Well, he asked me—wanted to know if I wanted a timber claim; he said he had a timber claim to locate."

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Do you remember those questions and those answers being made by you?

A. Yes, sir.

Q. Were they true? A. Yes, sir.

Q. Now, do you remember whether or not the money that you received at the time you made your proof, from the Idaho Trust Company, whether you

(Testimony of Edward M. Lewis.)

got that on a check or whether somebody deposited that amount to your credit?

A. Well, I don't know, only that the check was made out to me and signed by my brother, that was all.

Q. Now, did I ask you who paid the filing fee in the land office, the first time you filed any papers?

A. Yes, I think you did.

Q. Do you remember what your answer was?

A. I paid it.

Q. From whom did you get the money?

A. I got the money from Mr. Dwyer for the filing fees.

Q. Was he at the land office at that time?

A. No.

Q. Or had you seen him just before you went to the land office? A. Yes, sir.

Q. Mr. Lewis, when you took up this timber claim did you have any understanding as to what you were going to get out of it, or what you were going to do with the property? A. No, sir; not at the time.

Q. Well, had your brother ever come to you before and offered to [1829—1499] put up the money for you to buy land? A. No, sir.

Q. What was it your intention of doing with that land?

A. Well, I supposed I was going to get it for my own use.

Q. Yes; but what were you going to use it for?

A. Going to use it for the timber that was on it.

Q. You expected to cut the timber on it?

(Testimony of Edward M. Lewis.)

A. Yes, sir; cut and sell it.

Q. And you thought your brother was coming to you to put up this money for you to get this timber just to cut it? A. Yes, sir.

Q. How does it happen that when he told you to deed it to him you did it without protest?

A. Well, he kind of got an idea, I guess, that I was going to try to sell the claim.

Q. Where did he get that idea?

A. I don't know, I am sure.

Q. Well, if it had been yours and he had no interest in it, what would have been the objection to your selling it?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Well, I don't know, only one day at the house there, a friendly talk there, was talking to me, and he told me he wanted me to go down town and deed that timber claim over to him.

Q. He told you it wasn't yours, didn't he?

A. Yes, sir; he said I had no right to try to sell it, or anything else.

Q. Did you tell him you hadn't tried to sell it?

A. Yes, sir.

Q. Did you tell him that you owned it?

A. I told him I supposed I owned it.

Q. What did he say to you? [1830—1500]

A. He says, "You don't; it don't belong to you."

Q. Did he say who it did belong to?

A. He says, "It belongs to these other parties, Dwyer and Kettenbach."

Q. That was before you made the deed?

(Testimony of Edward M. Lewis.)

A. Yes, sir.

Q. When you were taking that up, didn't you know you were taking it up for them?

A. No, sir; not at the time.

Q. As soon as your brother told you it wasn't yours you deeded it to him, as he suggested?

A. Yes, sir; he said it was liable to get me in trouble.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. You had previously received \$150.00 over and above the other money you had received, hadn't you, before your brother told you??

A. Yes, sir, I had received that money before.

Mr. GORDON.—\$150.00 or \$125.00?

WITNESS.—\$125.00, I think it was.

Mr. TANNAHILL.—Q. Was it \$150.00 that you received, instead of \$125.00?

A. Well, it might have been; I just couldn't say for sure.

Q. I will ask you if you know that your brother got \$250.00, and you got \$150.00 because your claim was a short claim, wasn't a full hundred and sixty acres?

A. I don't know in regards to what he got, I am sure; I never learned.

Q. But it was some time after you had received this \$150.00 that [1831—1501] your brother told you that the claim wasn't yours? A. Yes, sir.

(Testimony of Edward M. Lewis.)

Q. Now, didn't he tell you that he had sold the claim to Kester and Kettenbach?

A. I don't think that he told me that until after I deeded the place over to him, turned the claim over to him.

Q. When you deeded the claim over to him he told you that he had sold it to Kester and Kettenbach?

A. He told me I had sold it then and taken it in his hands.

Q. Now, you had no contract, understanding or agreement, either directly or indirectly, that you would convey that land to anyone before you made your final proof? A. No, sir, I did not.

Q. Either to your brother or anybody else?

A. No, sir.

Q. And your brother frequently loans you money and you loan him money, do you not?

A. Yes, sir.

Q. You often work together? A. Yes, sir.

Q. When this contest was filed, I will ask you if you remember of receiving a notice of that contest through the mail some way?

A. Yes, I received a notice the next day after Mr. Dwyer had notified me.

Q. Do you remember of testifying at the trial of Kester and Kettenbach and Dwyer, at Moscow, when they were convicted of conspiracy? You testified in that trial, did you not?

A. I think so, yes. [1832—1502]

Q. Now, to refresh your recollection, I will ask you (page 554):

(Testimony of Edward M. Lewis.)

“Q. Where were the contest papers first served on you and is that the way you found out the claim was contested?

“A. I think I received notifications of the contest through the mail, but as to who sent them, I don’t recollect.

“Q. Didn’t you take that notice of contest to Mr. Dwyer and tell him your place had been contested after you received it through the mail?

“A. Yes, sir.

“Q. And did not Mr. Dwyer tell you you had better employ an attorney and look after it, that it was worth looking after? A. Yes, sir.”

Does that refresh your recollection?

A. Yes, sir.

Q. And you received a notice of the contest through the mails, and then took it to Dwyer?

A. Yes, sir.

Q. And he told you that you had better employ an attorney and look after it, that it was worth it?

A. Yes, sir.

Q. And at the same time you considered the land yours? A. Yes, sir.

Q. That was after you had made final proof?

A. Yes, sir.

Q. Now, do you remember, Mr. Lewis, of testifying at the same trial (pages 546 and 547):

“Q. How did you come to take up a stone and timber claim, Mr. Lewis?

“A. By request of my brother.

“Q. Did your brother state to you anything which

(Testimony of Edward M. Lewis.)

Mr. Dwyer had said to him about taking up a timber claim, Mr. Dwyer or Mr. Kester? [1833—1503]

“A. Yes, sir.

“Q. Well, you took up a timber claim?

“A. Yes, sir.

“Q. Who attended to the business for you?

“A. My brother attended to most of it.

“Q. What part of it did you attend to?

“A. Just the filing, I think it was; the proving up.”

Now, you remember that it was your brother who first spoke to you about taking up a timber claim?

A. Yes, sir.

Q. Then when Mr. Dwyer and you talked about it was when your brother had told you to go to Mr. Dwyer? A. I don't just recollect now.

Q. That may have been the way of it?

A. Yes, it might have been the way; I can't recall it now.

Q. Anyway, after you had talked to your brother about taking up a timber claim he said something to you about going to Mr. Dwyer. Do you remember that you went to Mr. Dwyer then?

A. Yes, sir.

Q. And had a talk with him about going up and looking at the land?

A. Yes; he set a certain day to go up.

Q. Set a certain day to go up. Now, you don't remember now of having a conversation with Mr. Dwyer about it before you and your brother had that conversation, do you? A. No, I do not.

(Testimony of Edward M. Lewis.)

Q. Under what circumstances did you make this statement for Mr. O'Fallon?

A. Well, I don't know as there was anything in particular, only my brother and I was both in the office at the time, and they was [1834—1504] asking my brother questions, and finally him and my brother got in a kind of a little argument, and I guess he was kind of wrathful and was trying to scare my brother into testifying as to what he wanted him to testify to; he said if he didn't testify as he wanted him to there was a little institution over the way that would take care of him.

Q. What did he refer to?

A. I don't know; that is more than I can say. Him and my brother had that conversation. All that I knew was just what transpired between my brother and I; that was all the testimony I could give.

Mr. TANNAHILL.—Let me have that statement, Mr. Gordon.

Thereupon Mr. Gordon handed the statement to Mr. Tannahill.

Q. Now, when Mr. O'Fallon was telling your brother that if he didn't testify the way he wanted him to there was a little institution over the way that would take care of him, did O'Fallon tell him how he wanted him to testify?

A. He told him he just wanted him to answer the questions he asked him.

Q. Did he tell him how he wanted him to answer them? A. No, sir, not in particular.

(Testimony of Edward M. Lewis.)

Q. Now, I didn't understand who you said handed you the money to pay the filing fees? Did you say it was your brother that handed you that, or Mr. Dwyer? A. No, I think—I think—

Q. I see in this statement which you made for Mr. O'Fallon that you say:

“Q. Who paid the expenses of that trip?

“A. I don't know who it was.

“Q. Did Dwyer require you to pay any expenses?

“A. No, sir.

“Q. Who paid the filing fees in the land office?

[1835—1505]

“A. It was the same way; the money was given to me.

“Q. By whom?

“A. Handed to me by my brother.”

A. I know at the time the filing papers was handed to me it was Mr. Dwyer, because my brother wasn't there at the time, and Mr. Dwyer handed me the money there on the street when I went down that morning to file.

Q. Mr. Lewis, you wasn't positive about the year you received the \$150.00 or the year you made the deed. I will ask you if it wasn't about January, 1905, that you received the \$150.00?

Mr. GORDON.—There are two questions there together. Ask him about the year he got his money.

A. Yes, sir.

Mr. TANNAHILL.—Q. Then it was after that date that you made the deed, was it not?

A. Yes, sir.

(Testimony of Edward M. Lewis.)

Q. Deeded it to your brother? A. Yes, sir.

Q. And you proved up in October, 1904?

A. Yes, sir.

Q. October 26, 1904? A. Yes, sir.

Q. Did you give a mortgage on your place before you gave the deed? A. No, sir.

Q. I will ask you if you know anything about your brother trying to sell these claims to Joe Molloy and other parties before he sold them to Mr. Kester?

A. I don't know of any such transaction at all.

Q. He may have done that?

A. He might have, so far as I know; he never told me anything about it. [1836—1506]

Q. I will ask you if it wasn't your understanding that when he told you the claim wasn't yours, that he had sold it to someone after you had made your final proof? A. (Pause.) Yes.

Q. I believe you say that when you got that \$150.00 it was about the time you was going to get married, and you wanted some money to fix up your house, and you went to him and asked him if he couldn't get you some money on your claim; was that it?

A. No; I asked him if he knew where I could get some money from, and he said he would get me the money that was due on my claim.

Q. And he did get you the money? A. Yes, sir.

Q. I will ask you if you remember that afterwards you spoke to him about whether or not you would get anything more out of it, and he told you no, that

(Testimony of Edward M. Lewis.)

your claim was a short claim and he couldn't get anything more for you?

A. I know he told me that I wouldn't get any more for it, that I had got all that was due me; he didn't say anything in regard to it being a short claim or anything.

Q. Didn't he tell you he couldn't sell it for any more?

A. No, I don't remember that he said anything like that.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lewis, in response to a question asked you a moment ago by counsel for the defense, you said that your brother said that he would get you the money that was due you on your claim. Is that correct? A. Yes, sir.

Q. Now, was that the first talk you had with him about selling your claim? [1837—1507]

A. Yes, sir.

Q. Now, do you remember whether or not he came to you at that time and told you that he would give you so much for your right?

A. No, he didn't say anything about that.

Q. Didn't he tell you he was giving you \$125.00 for your right?

A. He told me that was what I was to receive for my timber claim.

Q. That was the first talk you had with him about it? A. Yes, sir.

Q. And you took it and said nothing more about

(Testimony of Edward M. Lewis.)

it? A. Yes, sir.

Q. And you made the deed when he told you to?

A. When he asked me to.

Q. Referring to the conversation you had with Mr. O'Fallon that you have related here, and the statement that you have related that he would transport you to a little place across the way, what brought that about? Tell the whole transaction. Tell what you did and what your brother did.

A. I didn't do anything. I was just sitting there, and O'Fallon and my brother was talking.

Q. Where was this? A. This was at Moscow.

Q. In the courthouse?

A. Yes; in Mr. O'Fallon's office, and they got into some—he asked my brother some question, and I don't know—my brother—just now, whether he wouldn't answer it or told him he wouldn't answer it, or something like that—I don't know just which it was; and one word brought up another, and Mr. O'Fallon made that remark to him.

Q. Now, you and your brother had been summoned before the grand jury, had you not, at Moscow?

A. I don't just recollect whether it was the grand jury or for [1838—1508] the trials.

Q. You were there under Government subpoena?

A. Yes.

Q. And you and your brother had gone up there together? A. Yes, sir.

Q. And hadn't you and your brother made up your minds that you were going to stand together and

(Testimony of Edward M. Lewis.)

wouldn't give any more information than you had to?

A. Yes, I think that was the agreement with my brother, that is, he told me not to tell anything that would get me into trouble or anything like that.

Q. Was it only not to get you into trouble, or not to tell anything to get anybody else in trouble?

A. I don't remember whether he said anything about anybody else. He said to leave everything to him, and I just trusted to him; that was all I could do, as I was ignorant of the proceedings that I was up against.

Q. And you sat there and heard Mr. O'Fallon interrogate your brother, is that correct?

A. Yes, sir.

Q. And your brother declined to answer questions? A. Yes, sir.

Q. Was it then that Mr. O'Fallon told him that if he wouldn't answer questions that he would get into trouble, or something of that kind?

A. Yes, sir; that is just what he told him.

Q. Did Mr. O'Fallon or anybody else ask you to tell anything except the facts as they were?

A. No, sir.

Q. Did they indicate to you that they wanted you to tell anything but the truth? [1839—1509]

A. Nothing at all.

Q. Or your brother?

A. That is all they asked him to tell, was the truth.

Q. And he had declined to tell anything, had he?

A. I don't know what his statement was; he was

(Testimony of Edward M. Lewis.)

in there awhile before I was called in. I don't know what—there was a kind of argument at the time I went in.

Q. And they told you if you wouldn't answer questions you would get into trouble?

A. He told my brother that, and, of course, I was there and heard it, and it made me kind of leary.

Q. Then you and your brother told all you knew about it? A. Yes, sir.

Q. And all you told was the truth?

A. Yes, sir; as near as I knew how.

Q. As a matter of fact, weren't you and your brother trying to protect these defendants all you could?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. My brother might have been, but I wasn't at all. I hadn't said that I was going to try to sell them or anything, because my brother had done everything for me, and it was all kind of blank to me.

Q. Did your brother say he was going to protect them?

A. Why, he said he was going to testify to certain things. I told him I would have to testify to what I knew, that was all.

Q. Did he want you to testify to certain things that didn't accord with the facts?

A. Yes, two or three.

Q. That was your brother Hiram Lewis?

A. Yes, sir.

Mr. GORDON.—That is all. [1840—1510]

(Testimony of Edward M. Lewis.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. You wasn't there all the time when O'Fallon and Goodwin was talking to your brother, was you?

A. Yes, I was in there after I was called in, just a few minutes after my brother was called in; I was called in and I was there until he dismissed us both that evening. It was along about four o'clock that evening when we was called in there.

Q. And he talked to your brother the next day, didn't he?

A. Yes; I wasn't in there the next day.

Q. And he talked to your brother the day following? A. I don't just remember.

Q. He had you both badly scared, didn't he?

A. Yes, sir.

Q. He threatened to indict you?

A. No, he didn't threaten me, but he threatened to indict my brother, that unless—that was the only remark I heard him make to my brother that day; I don't know what he said after that.

Q. Did you ever see the statement your brother made for him?

A. No; I don't remember that I did.

Redirect Examination

(By Mr. GORDON.)

Q. What were you scared about, Mr. Lewis?

A. Well, everything was kind of done so underhanded to me that I was ignorant of the facts as to what was transpiring.

Q. Who had done the underhanded business?

(Testimony of Edward M. Lewis.)

A. Well, my brother; he hadn't—I thought it was kind of bad of him going ahead and getting me into such things as that and not relating to me the substance as to how the things was coming out, to [1841—1511] think my brother would do that way, and, of course, there was nothing left for me to do but tell the truth and get out of it the best way I could.

Q. And you told the truth there the best you could? A. Yes, sir.

Q. And you have told the whole truth here, have you? A. Yes, sir.

Recross-examination.

(By Mr. TANNAHILL.)

Q. There wasn't anything wrong done by either you or your brother that you know of, was there?

A. Not at all.

Mr. TANNAHILL.—That is all. [1842—1512]

[Testimony of Mrs. Carrie D. Maris Rexford, for Complainant.]

Mrs. CARRIE D. MARIS REXFORD, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Carrie D. M. Rexford, are you?

A. Yes, sir; I am.

Q. And your maiden name was Carrie D. Maris?

A. Yes, sir.

Q. Where do you reside, Mrs. Rexford?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. I reside at Colfax.

Q. That is Colfax, Washington?

A. Colfax, Washington, yes, sir; Whitman County.

Q. And where did you reside in July, 1902?

A. At Lewiston.

Q. Idaho? A. Lewiston, Idaho, yes, sir.

Q. And you were not married at that time?

A. No, sir.

Q. Now, I will show you the timber and stone lands sworn statement of Carrie D. Maris, dated July 15th, 1902, and ask you if you signed that paper and filed it in the land office at Lewiston, Idaho, at or about the date it bears?

A. Well, that is my handwriting there.

Q. That is the first paper you filed in the land office to initiate the entry?

A. Well, that is my handwriting on there.

Q. I show you the nonmineral affidavit of the same date, and ask you if you signed that paper?

A. That is my signature; yes, sir.

Q. Please answer yes or no. I show you the testimony of Carrie D. Maris given at final proof, November 1, 1902, and ask you if you [1843—1513] signed that paper?

A. That is my handwriting; yes, sir.

Q. I show you the cross-examination of Carrie D. Maris, taken at the same time, dated November 21, 1902, and ask you if you signed that paper?

A. That is my signature.

Q. Well, why don't you say you signed it, then?

A. Well, I signed it.

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. In July, 1903, were you employed in any capacity, Mrs. Rexford? A. In July, 1903?

Q. 1902? A. July, 1902?

Q. Yes? A. Yes, sir, I was.

Q. In what capacity? A. I was clerking.

Q. Where? A. At Vollmer's at that time.

Q. Now, what business was Mr. Vollmer engaged in at that time? A. In the dry-goods business.

Q. And you were a clerk in the dry-goods store?

A. Yes, sir.

Q. Who first spoke with you about taking up a timber claim? A. Clarence Robnett.

Q. That is Clarence W. Robnett?

A. Clarence W. Robnett.

Q. And do you know where he was employed at that time?

A. In the First National Bank—or at the bank there, I guess it was the First National—the bank.

Q. Well, was it the bank in which the Kesters and Kettenbachs were interested? [1844—1514]

A. Yes, sir.

Q. That is the Lewiston National Bank.

A. Well, the Lewiston National Bank.

Q. Well, Vollmer's bank is the First National Bank. A. Oh—that was it.

Q. Now, what did Mr. Robnett say to you, Mrs. Rexford?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to her taking up a timber claim, or any conversation with Mr. Robnett, in so far as her evidence relates to

(Testimony of Mrs. Carrie D. Maris Rexford.)

bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial.

Mr. GORDON.—Now, just answer the question.

The SPECIAL EXAMINER.—Just read the question.

The Reporter repeated the last question.

WITNESS.—Well, now, as nearly as I can tell you, we were walking along the street as I was going home to my dinner, and he overtook me, and he asked me—it was just at the time they were taking up claims—why I didn't take up a timber claim. I told him it was because—well, I believe I said, “How can a working girl save up money enough to take up one of those timber claims?” Is that all you want?

Q. No.

A. Well, he told me it wasn't necessary for me to have the money. Well, I told him I didn't see how I could get it, and he went on to explain that if I went out and took it up that he would furnish all the expense money and find me a purchaser; that when I had proved up on the claim he would find a buyer, and then the expense money was to be taken out of what he got for the claim, and the profits were to be divided, half between himself and myself.

Q. That was Mr. Robnett's proposition?

A. That was Mr. Robnett's proposition, yes, sir. And he went on to tell me how many others—well, I knew that ever so many others [1845—1515]

(Testimony of Mrs. Carrie D. Maris Rexford.)

had filed, but I didn't know at the time how they had got their claims, but he explained; he said that ever so many others had done the same thing. And that is how I entered it.

Q. Now, that was before you even went to view the claim?

A. Yes; that was the very first that I ever thought of getting a claim—the first time I had ever given a thought to getting one.

Q. You didn't have the money to buy a timber claim? A. No, sir, I didn't.

Q. Well, what did you say to him?

A. I told him that I couldn't, and he said that I could, and he said that was the way that others had taken it up. He said if I would take it up that he would get a claim for me to take.

Q. Well, did you finally consent to take a claim?

A. I did, yes.

Q. And did he tell you what claim he had?

A. Not that day he didn't, but it wasn't but a few days until he did; he sent word for me to come over to the bank he wanted to see me. Well, let me think; I believe it was a squatter's claim first he offered me, and I didn't want that. I told him I couldn't take that.

Q. Why?

A. Because I understood I had to live on it, and I couldn't do that. I had to stay where I was and work.

Q. Well, did he want you to go up there and "squat" on a claim?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. He offered me that first, yes, and he seemed to think it was just the thing; but I didn't take the proposition at all.

Q. Well, then what next happened?

A. Well, I don't know just how many days elapsed, but several—

Q. Well, now, I will ask you: You say you went to the bank to see him. Where did you see him in the bank?

A. Well, there was a little, small room off from the bank, and there is a hall. I saw him as I stepped into the bank. Well, he was [1846—1516] standing right there waiting for me, he knew I was coming, and I went into a little room—not into the bank part, but a little room off from the bank.

Q. Do you know whether that was the directors' room? A. I guess it was.

Q. Well, do you know?

A. No, I don't know for sure. I think that was the room. There was a hall on the same floor.

Q. Now, what did Mr. Robnett say to you on that occasion?

A. Well, that is the time he offered me the squatter's claim, and then when I didn't take it I went back to my work, and that is all there was to it that day; and then later he sent for me to go to see him, and he said he had a stone and timber claim for me just at that time, and that there was three claims that he had at that time, and he said if I would go right away he would give me the first claim and he would give me the best, and that others would follow

(Testimony of Mrs. Carrie D. Maris Rexford.)

the second day, and that if I would take it I would get the first of them, and I accepted the proposition, and went.

Q. And where did you go?

A. I went as far as Greer on the train; then I took the stage from Greer to Pierce City.

Q. And then you went on to the claim from Pierce City? A. I did.

Q. Did you pay your own expenses of that excursion? A. No, sir.

Q. Where did you get the money from to pay that?

A. From Mr. Robnett.

Q. Do you remember how much money he gave you to pay the expenses of that trip?

A. Well, now, I don't know as I can remember. It seems to me that it was \$50.00 that I had. He gave me all I needed, whatever it was. I got all the money from him for the trip. [1847—1517]

Q. And did you meet a locator? A. I did.

Q. Did you make your own arrangements to meet him?

A. I did not. I didn't even know the gentleman. Yes. I did—I will take that back; I had been introduced to him in Lewiston—Charlie Jensen—and he was at Pierce City waiting for me. He had been notified by Robnett that I was coming, and I think I had been told where to go, and he was there waiting for me when I got there.

Q. Now, do you remember who went with you besides Jensen?

A. Well, I made the trip to Pierce City alone, but

(Testimony of Mrs. Carrie D. Maris Rexford.)

at Pierce City there was a young man by the name of Charlie Smith that went out. He didn't go out with me, but he went later so as to be a witness for me at the land office, and Johnnie Marksberry.

Q. And then you returned to Lewiston after viewing the land, did you not? A. I did.

Q. And did you see Mr. Robnett before you filed?

A. I did.

Q. And do you remember who prepared the filing papers that I have shown you—the papers you filed in the land office? A. You mean in the land office?

Q. No. Who prepared them for you? Where did you get the papers?

A. Well, I didn't have anything given to me until I was in the land office.

Q. Now, who gave them to you? Did you go to the land office alone?

A. Yes. Mr. Robnett went as far as the door of the land office with me, but I went in alone, and as far as I know he wasn't in the room when I filed.

Q. Now, who paid the filing fee?

A. Mr. Robnett gave me the money. I went right out of the bank [1848—1518] to the land office, and he gave me the money down there.

Q. How much did he give you?

A. I believe it was \$411.00.

Q. No—I mean the first time you went to the land office, when you went to file the first paper you filed in the land office?

A. Well, now, I don't know how much it took. He only gave me just enough for what I needed, but

(Testimony of Mrs. Carrie D. Maris Rexford.)

I didn't notice what it was.

Q. Was it somewhere about between \$7.00 and \$11.00?

A. \$11.00—now that's what he gave me; it was \$11.00.

Q. That was the day you filed your first papers?

A. Yes, sir.

Q. That is the day he took you to the door of the land office?

A. Yes, sir. Well, now, when I went back again he went with me to the door of the land office.

Q. Now, where did you see him in the bank each day you went to see him?

A. Now, the day he gave me the money he handed it to me through the window in the bank.

Q. Is that the day you made the final proof?

A. Yes, sir; the day I went to the bank; he handed it to me through the window of the bank.

Q. Then did he give you any money?

A. I think he gave me \$411.00, or whatever the amount was.

Q. It was four hundred and some odd dollars?

A. Yes.

Q. Where did you get that?

A. From Clarence Robnett. He gave me that through the window of the bank, and then he came out of the bank and went upstairs to the land office door with me.

Q. Now, did he tell you what you were to swear to when you went to the land office, as to where you got that money?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. No, he didn't. But I will say this much: I wasn't asked any questions that made me swear to a single lie. [1849—1519]

Q. Weren't the questions asked you?

A. I wasn't asked anything that made me lie or say one false thing, because I'll tell you, when I went back to the store—they knew that I had made this trip and went out, and as quick as I came back to the store someone said, "Well, how many lies have you swore to?" And I said, "Not a single one; they didn't ask me to swear to anything that was wrong; that I hadn't told anything false."

Q. Were your final proof papers prepared downstairs?

A. Well, not that I know of. I don't know.

Q. And you say Robnett gave you four hundred and some odd dollars; or do you remember you paid just exactly \$400.00 and whatever the expense was?

A. Yes, sir.

Q. And you got all that from Robnett?

A. Every bit; yes, sir.

Q. And you got your final receipt, and did they give you a receipt at that time when you paid that \$400.00 into the land office? A. Well, I—

Mr. GORDON (to Mr. TANNAHILL.— Have you got her deed?

Mr. TANNAHILL.—No, I don't think so. She deeded to Robnett, and then Robnett deeded to Kester and Kettenbach.

WITNESS.—No. You see I didn't get the deed, because I deeded it over to Robnett. He got me to

(Testimony of Mrs. Carrie D. Maris Rexford.)

do that the day before I was married.

Mr. GORDON.—Q. Now, did you ever give a note to Mr. Robnett for this money? A. No, sir.

Q. That he gave you?

A. I never did. I was never even asked for one.

Q. And did you ever pay any interest on it?

A. I did not; no, sir.

Q. Did you ever spend any of your own money in taking up the claim, going up to the claim, or any of the expense at the land office, or final proof, or any incidental expense at all? Did you ever pay [1850—1520] out any of your own money?

A. One dollar, that's all, because I just happened to be one dollar short, and I used it out of my own money so I wouldn't have to ask him for it; but I was just one dollar short.

Q. How much did you get out of this claim?

A. Well, I got \$106.00. I got it, I believe, in two or three payments; I don't know as I can tell exactly, but I got \$106.00.

Q. And who did you get it from?

A. Robnett, and he never asked me for any paper. If he has any paper against me in any way I have never given it. I never was asked for it. He told me I could have whatever I wanted; I suppose if I had asked for more he would have given it to me. That is what I asked for and that is what I got.

Q. Accommodating Clarence!

A. Well, he told me that, and that's how I got it.

Q. Now, when you took up this land, Mrs. Rexford, it was your understanding that you were to

(Testimony of Mrs. Carrie D. Maris Rexford.)

convey it to whoever Robnett told you to, and he was to divide it?

A. Well, he said he would find a purchaser.

Q. Well, I say, you were to convey it to whoever he said, and you were to divide the profits?

A. Yes, sir.

Q. That is the understanding you had when he first talked to you about it?

A. Yes, sir; that is the way I understood it.

Q. Now, do you remember when you got the first of this \$106.00?

A. No, I don't think I can give you the dates at all. Well, let's see, I know I got some money one time just before Christmas time; perhaps the first of December or such a matter.

Q. Was that just after you had made your final proof, or before?

A. Well, now, I don't know that I can tell you exactly which it was. I couldn't tell you exactly.
[1851—1521]

Q. You never paid a location fee?

A. No, sir; I never saw that money.

Q. You were never asked to pay it, either, were you?

A. I never was. Jensen told me that Robnett had told him that he would settle that, and Robnett told me that he would settle it with Jensen. I never had the handling of it in any way.

Q. Well, you were not to pay any of your own money for this at all; you were to be under no expense whatever; is that correct?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. That is the way I understood it; yes, sir. Robnett made the proposition himself. I never gave it a thought that I could, but he said I could.

Q. And if it had not been for that, and that he said he would sell it for you and divide the profits, you would not have done it?

A. Well, I wouldn't have done it unless he had explained to me that he could sell it, and he said he could.

Q. And the first talk you had with Robnett, that is the time he said he would find you a purchaser, was it not?

A. Yes, he went on to explain the whole thing. Yes, the first time.

Q. Who were the other people that he told you had taken up claims under those conditions?

A. Well, I don't know exactly that I remember. A great many of them were strangers to me.

Q. Was there any of them that you remember the names of?

A. Well, I don't know as I could right now. You see this has been some time ago, and a good many of them I didn't know at all when he mentioned them, and I don't know that I can recall one now that he did mention.

Q. How many times were you in the Lewiston National Bank relative to this transaction?

A. Well, let me think. I was in at least four or five times. There was the twice that he sent for me, the first time to see about me [1852—1522] taking this squatter's claim, and I didn't take it; then the

(Testimony of Mrs. Carrie D. Maris Rexford.)

next time he made a proposition of the stone and timber claim, and I did accept that; and then I went back the morning I got word to go and get the money to make the trip with; and then the two trips to the land office when I got money from him, and times when I wanted money that he let me have on the claim.

Q. Four or five or six times?

A. Yes, there must have been all of that—six or seven, possibly.

Q. And the profits were to be divided when he sold the property; is that right? A. Yes, sir.

Q. You were not to sell the property; he was to sell it?

A. He was to sell it; yes, sir. He told me I had nothing to bother with at all; nothing to see to at all; he would attend to everything. That is the way I understood it when I went up.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Carrie D. Maris, dated July 15th, 1902, the nonmineral affidavit of Carrie D. Maris, the testimony of Carrie D. Maris given at the final proof, and the cross-examination of Carrie D. Maris taken at the same time, all of which papers have been identified by the witness, the testimony of the witnesses on final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated November 21st, 1902, a certified copy of the patent, dated February 25th, 1904, issued to Carrie D. Maris, all relating to the entry of the southeast quarter of the southwest quar-

(Testimony of Mrs. Carrie D. Maris Rexford.)

ter of section 12, the east half of the northwest quarter and the northeast quarter of the southwest quarter of section 13, in township 36 north, of range 5 east, of Boise meridian. And we also offer in evidence a certified copy of a deed from Carrie D. Maris, a single lady, dated the 2d day of June, 1903, conveying to Clarence W. Robnett the southeast quarter of the southwest quarter of section 12, and the east half of the northwest [1853—1523] quarter and the northeast quarter of the southwest quarter of section 13, in township 36 north, of range 5 east, of Boise meridian, acknowledged by Carrie D. Maris June 2d, 1903, before John E. Nickerson, a notary public for Nez Perce County, Idaho, and filed for record in the office of the recorder of Shoshone County, Idaho, at the request of the Shoshone Abstract Company, June 27th, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered, but severally object to each and all thereof, in so far as they relate to bills Nos. 406 and 407, upon the ground that the entry made by the witness is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants severally object to the admission of all of the final proof papers in evidence in support of either of the bills or actions, upon the ground that they are matters relating strictly to the final proof, occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Said documents were theerupon marked by the

(Testimony of Mrs. Carrie D. Maris Rexford.)

Reporter as Exhibits 76, 76A, 76B, 76C, 76D, 76E, 76F, 76G, 76H, 76I, 76J, 76K, 76L, 76M, 76N, and 76-O.

Mr. GORDON.—Q. Mrs. Rexford, the money that you got for the land office, the \$400.00 you paid in there, you drew that money from Robnett, did you not?

A. Yes, sir, I did.

Q. Well, now, in this cross-examination that you signed here you were asked this question: "Question 17"—this is when you made your final proof—"Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I earned it clerking in stores. 3 months."

A. I never made that reply, because that would have been a falsehood, and I didn't do it. [1854—1524]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Rexford, you gave a mortgage on the land after you had made final proof, to Mary L. Sullivan, did you not? A. No, sir.

Q. You don't remember of signing any instrument to Mrs. Sullivan? A. No, sir, I don't.

Q. And—

A. To who did you say, Mr. Tannahill?

Q. To Mary L. Sullivan.

A. I don't even remember her. I don't know anything about her. Have they any such document against me?

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. Mrs. Sullivan, I understand, furnished the money for you to make final proof—Robnett got it from Mrs. Sullivan.

A. Well, I don't know anything about that. This is the first time I ever heard her name mentioned.

Q. The abstract shows there was a mortgage executed by you? A. It does?

Q. Yes. A. Well, I know nothing of it.

Q. Now, after you made your final proof you held the land how long before you finally deeded it to Mr. Robnett?

A. Well, I deeded it to him on the 2d of June, along late in the afternoon, and I was married the next day.

Q. The 2d of June, of what year?

A. I was married on the 3d of June, and I deeded it to him on the 2d of June, 1903.

Q. And you made your final proof on November 22d, 1902?

A. Well, that must have been about the time. I couldn't tell the date exactly.

Q. And I will ask you if you frequently talked with Mr. Robnett in the meantime about selling the land? [1855—1525]

A. Oftentimes, yes; and he would keep me thinking that in just a day or two, or a few days or a week, he would have a buyer for it. I even sat in that room off from the bank while he telephoned—I don't know who to, but he made me think he was talking to a man in Moscow, to a man that was just ready to purchase the land; and when I left the office that day I thought I would have my money in just a few days. He was

(Testimony of Mrs. Carrie D. Maris Rexford.)

talking over long distance, and I listened to the conversation.

Q. And did you know of his trying to sell it to Joe Molloy?

A. No, sir, I didn't. If he did that I didn't know it, but he didn't always tell me who he was expecting to sell it to, only he was just on the verge of selling it to somebody.

Q. He would first tell you that someone was going to buy it? A. Yes, sir.

Q. Or he was going to sell it to someone; and then the next time he would see you he would tell you he had a deal pending with someone else?

A. Yes, that's the way it was, and I often met him on the street going home in Lewiston, and always that would be mentioned to me, that he was just ready to sell it every time, and the night I deeded it over to him—the evening just before I was married—I fully expected my money within ten days.

Q. And how long was it after that before you got your money?

A. Oh, I never got a cent after I was married. All the money I ever got from him I got while I was still clerking in Vollmer's store.

Q. Now, did he ever tell you one time in regard to a sale that he was negotiating with someone for \$1,500.00.?

A. Well, now, he might have, but I don't remember. I do remember that I expected—I thought he was going to sell that claim for \$2,000 or \$2,500; he told me he thought it was worth every dollar of that. Now he may have mentioned it; I wouldn't want to

(Testimony of Mrs. Carrie D. Maris Rexford.)

say that he didn't, but I don't remember that he did.

Q. And do you know that he ever sold it to Kester and Kettenbach for \$1,600.00? [1856—1526]

A. I do not.

Q. Anyway, you didn't get your part of that \$1,600.00—that is, only the \$106.00?

A. That is all I ever did get.

Q. Over and above the expenses of the claim?

A. Yes, sir, that's all I ever got.

Q. Now, did he tell you what the expenses of acquiring title to the land was?

A. Well, it would be just what my trip was to Pierce City and back, and—

Q. About \$50.00?

A. Well, I believe that's what he gave me for the trip. It is so long ago and I haven't thought of this for quite a while, but I think that was it.

Q. And \$100.00 for location fee?

A. But I never handled that.

Q. Well, I was figuring up the expenses of the claim.

A. Oh, well; yes, there was to be \$100.00 paid to Jensen. He said he paid that, or would pay it.

Q. And \$11.00 for advertising?

A. Yes, I had that.

Q. And \$400.00, the purchase price of the land?

A. I believe that was just what was given me.

Q. That would be \$561.00?

A. And then there was—let's see, what fee was it we had to pay to the notary public when I signed the claim over to him? I didn't handle that, though; he paid that. I didn't have the handling of it, so I

(Testimony of Mrs. Carrie D. Maris Rexford.)

couldn't say what it was, but I think it was only a dollar at the time; but whatever it was he handled that; he paid it himself.

Q. Then the expenses were something like \$600.00? A. Yes, they were.

Q. And if he sold the claim for \$1,600.00, there would have been [1857—1527] \$1,000.00 to divide between you?

A. Well, I don't know anything about it. I didn't even know that he ever sold it. He did sell it, though, did he?

Q. Yes, the abstract shows that he sold it to Kester and Kettenbach for \$1,600.00; that is what they gave for it.

A. Well, he told me when he sold it he would get at least \$2,000.00 or \$2,500.00 for the claim, and I expected my share out of it—fully expected it; and when I came down to Colfax—was married and came down there—I expected that at least within ten days I would have my money. That was the last understanding between he and I, that it would not be more than a few days at the most; and I never got a cent after that—not one penny.

Q. Now, did you get a part of this \$106.00 just before you got married?

A. Well, I couldn't tell you just how many days before; it wasn't a very long time before. The last that I got, I believe it was \$60.00 at one time; I believe the last he handed me was \$60.00, and when he handed me that he asked if I wanted more, and that's just what I wanted, and that's all I took; but he asked me then if I wanted more.

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. Now, at any of these times when you entered the bank to see Robnett you had no conversation with Kester or Kettenbach, did you?

A. Never. Clarence Robnett is the only one I ever had any dealings with at all.

Q. Did he make an effort to have his conversations out of the presence of Kettenbach and Kester?

A. Well, I don't know that those gentlemen were ever present at the conversations at all. Now, possibly,—I couldn't tell you,—possibly they were in the bank when he handed me out that money; but I never had any dealings with them, and whoever it was behind there in the bank I would pass the time of day.

Q. You never had any agreement or understanding that you would sell your land to Kester and Kettenbach? [1858—1528]

A. Never. That was never mentioned. As to who were the buyers he never mentioned, except the once when I supposed he was talking to Moscow, and then he told me that a man by the name of Nat. Brown was to be the buyer; but that is the only name that was ever mentioned as a purchaser—no, I believe there was a lumber company, but I don't believe I remember who the company was—some company, anyhow,—but the only individual he mentioned was a man by the name of Nat. Brown, and I supposed he was talking to him when I overheard that conversation over the telephone in the bank.

Q. The Potlatch Lumber Company, or the Clearwater Timber Company, were they mentioned?

A. Well, I couldn't say what the company was; I don't remember.

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. Do you remember of his telling you that he had optioned it to Fred Emory—had some negotiations with Fred. Emory about purchasing it?

A. I don't remember that name, either. I don't remember of it now.

Q. In fact, you had no definite agreement to sell your land before you made your final proof, did you?

A. Well, now, the first time he offered me the proposition to take this claim he told me he would go ahead and see to the selling of it, and I would have no more trouble, and all I would be required to do would be to take the land and prove up on it, and he would see to the rest.

Q. He would find you a buyer?

A. Find a buyer and sell it for me, and we would divide the profits; that was thoroughly understood then.

Q. And there was no name mentioned as to who you should deed it to? A. No, there wasn't.

Q. And there was nothing said about you deeding it to anyone? A. No, there wasn't.

Mr. TANNAHILL.—That's all. [1859—1529]

**[Testimony of Benjamin F. Bashor, for
Complainant.]**

BENJAMIN F. BASHOR, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Benjamin F. Bashor, is it not?

A. Yes, sir.

(Testimony of Benjamin F. Bashor.)

Q. Where do you reside, Mr. Bashor?

A. Spokane.

Q. Where did you reside in 1903?

A. Well, up to about the month of April I resided in Lewiston, Idaho, when I removed to Peck, about thirty-four miles east of Lewiston.

Q. Do you remember taking up a claim under the timber and stone act in March, 1903?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 21st, 1903, signed Benjamin F. Bashor, and ask you if you signed and filed that paper in the land office at Lewiston?

A. That is my signature.

Q. I show you the nonmineral affidavit of Benjamin F. Bishop of the same date.

A. That is my signature.

Q. I show you the testimony of Benjamin F. Bashor given at final proof June 17th, 1903; is that your signature? A. Yes, sir.

Q. And the cross-examination taken at the same time? A. Yes, sir.

Q. I will ask you who spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence [1860—1530] of the witness relative to taking up a timber claim, in so far as the evidence relates to bills No. 406 and 407, on the ground that the evidence is immaterial, the entry not being involved in these two particular actions.

Mr. GORDON.—Q. Who first spoke with you about taking up a timber claim?

(Testimony of Benjamin F. Bashor.)

A. Mr. Robnett.

Q. State where it was and what it was, and what was said.

A. Well, it was during the month of February, as near as I can remember now. It has been some time ago and I have given it very little thought. It was in the early part of the year 1903; I wouldn't be positive about the month—either January or February, and he first spoke to me on the streets of Lewiston. Very little was said; and on other occasions he spoke about it before I became interested. He simply told me it was a chance to make some money, that there was timber claims being taken up, and so forth, and I told him I didn't have the fever yet, or something to that effect, but after talking to me several times I became somewhat interested, and he told me then at different times that Messrs. Benton and Knight, I think it was, were the locators, and were going to take a crowd up there on a certain date, and the date had already been set, and I consented to go with them, and when the time arrived, or about that time, for some reason they didn't go, and he told me that I believe in the directors' room of the Lewiston National Bank that they couldn't go at that time, and he set a later date; I don't remember just the date, but I think the fore part of March, and we did go, Benton and Knight, three of us, went up at the same time.

Q. Who were of the party that went to view this land besides Benton and Knight?

A. They were the only ones of the locators.
[1861—1531]

(Testimony of Benjamin F. Bashor.)

A. A man named John Little and Arthur Storey, I think it was, or Store,—a son of George Store,—three of us.

Q. Did you pay a location fee?

A. No, I didn't, at that time; I gave my note for the amount, whatever it was.

Q. When did you give your note?

A. Well, now, I can't remember. I don't remember whether it was at the time the filing was made or when I proved up; I wouldn't be positive. I gave him a note—gave him—

Q. Gave who? A. Robnett.

Q. For how much?

A. Well, it was the whole amount, whatever the cost was,—about \$400.00,—and then the location fee, whatever that was,—either \$100.00 or \$125.00, I don't remember which; and I can't remember whether I combined that all in one or it was in two separate notes, but I am almost sure it was all in one note.

Q. And that was given about the time you made your proof? A. I think it was.

Q. Who paid your expenses up to view this land?

A. I paid that myself.

Q. Who prepared your filing papers?

A. Well, sir, I don't remember about that.

Q. Do you remember going to any lawyer's office?

A. No, I don't.

Q. Well, you filed anyhow. Do you remember who paid the filing fee? A. I paid that.

Q. Were you reimbursed for that? [1862—1532]

A. No.

(Testimony of Benjamin F. Bashor.)

Q. Now, how many times did you talk to Robnett about this matter in the bank? A. In the bank?

Q. Yes.

A. Well, I think the conversations here in the bank was two different times, as near as I remember now.

Q. One was just before you filed, the day the postponement was made, and the other the time the final proof was made?

A. And the time the final proof was made.

Q. Were you in the directors' room both times?

A. Yes, sir. He gave me his personal check on the Lewiston National Bank.

Q. You had that cashed in the bank?

A. Yes, sir.

Q. Did that happen the same day you made your proof? A. Yes, sir.

Q. And that was the money you made your proof with? A. Yes, sir.

Q. Did Robnett say anything to you about that was your own money?

A. Yes, he told me on two different occasions, I think.

Mr. TANNAHILL.—We object to any evidence in relation to final proof, upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. Did he have a set of questions down there that you had to go over at the land office?

A. No, sir.

Q. And you went to the land office and paid that \$400.00 in, did you, that you had gotten on Robnett's check?

(Testimony of Benjamin F. Bashor.)

A. Yes, sir; whatever it was. It was a little less than \$400.00. [1863—1533]

Q. Do you remember them asking you in the land office where you had gotten that money?

A. Yes, sir.

Q. Do you remember what you told them?

A. Yes, sir.

Q. What did you tell them?

A. I told them I made it when I was county assessor.

Q. And that you had had it six months?

A. I don't remember just how long I said.

Q. That wasn't exactly true, was it?

A. No, sir.

Q. Now, you say you gave Robnett a mortgage or—they gave you a receipt at the land office when you paid that money, did they? A. Yes, sir.

Q. What did you do with that?

A. I suppose I turned that over to Robnett when I gave him the mortgage, to secure those notes.

Q. And that was the same day?

A. The same day, yes sir.

Q. And you gave him a mortgage for \$550.00?

A. Well, it would be about that amount, I believe; it was for the location fee and to prove up, whatever that was.

Q. Did he caution you when you went to the land office to say that you didn't get the money from the bank?

A. Well, he cautioned me—I don't know just the words, but he cautioned me not to tell them that I had to borrow the money, something to that effect.

(Testimony of Benjamin F. Bashor.)

I don't know the words he used, but—

Q. Now, did you have any talk with Will Kettenbach about this claim?

A. About the land? [1864—1865]

Q. Yes. A. No, sir.

Q. Never on any occasion?

A. No, sir. All the conversation was done through Mr. Robnett; there was nothing between Kettenbach and I.

Q. Didn't you meet Mr. Will. Kettenbach on the train one day and have a talk with him?

A. Well, I was thinking—yes, it was Kettenbach, too; I was thinking at a time since, but it was Kettenbach; I met him on the train as I went to Moscow, it seems.

Q. What did he say then?

A. I told him I had just received a letter from Robnett with reference to the timber land, and he wanted me to give him a deed to that to properly satisfy the note and mortgage. I told him Robnett wanted me to turn it over to Kettenbach; the letter was from Robnett and I had just received it a few days before meeting Mr. Kettenbach on the train.

Q. What did Kettenbach say to you?

A. He told me to take it up with Robnett when I got back home. I told Mr. Kettenbach I wouldn't take it.

Q. What did Kettenbach say he was giving for those claims, over and above the notes?

A. About \$30.00, that was about what it amounted to. I think he was offering me about \$1,000.00, but

(Testimony of Benjamin F. Bashor.)

that is about what it amounted to—\$30.00 above notes and interest. That was two years and a half though after final proof was made.

Q. And you did then convey to William F. Kettenbach? A. How is that?

Q. You afterwards conveyed to William F. Kettenbach?

A. Yes, sir, some time after; I don't remember the exact date. [1865—1535]

Mr. GORDON.—We offer in evidence the papers that relate to the timber and stone entry of Benjamin F. Bashor, which have been identified by him, and the other files of the land office relative to that claim. I think these are already in, Mr. Tannahill. We also offer a certified copy of the mortgage. I think these have already been offered and are exhibit No. 49. We also offer the certified copy of the receiver's receipt, dated July 17, 1903, issued to Benjamin F. Bashor, for Lot 4, and the southwest quarter of the southeast quarter and the south half of the southwest quarter of section 24, township 39 north of range 3 east, Boise meridian, recorded in the office of the Recorder of Shoshone County, at the request of W. F. Kettenbach, June 20, 1903; also certified copy of mortgage, dated June 17, 1903, made by Benjamin F. Bashor and wife to Clarence W. Robnett, conveying the property last described to Clarence W. Robnett, to secure a promissory note of even date therewith, payable to the order of Clarence W. Robnett, in the sum of \$550.00, in one year after date, said mortgage being acknowledged before John E. Nicker-

(Testimony of Benjamin F. Bashor.)

son the 17th day of June, 1903, and recorded in the office of the Recorder of Shoshone County at the request of W. F. Kettenbach June 20th, 1903.

Mr. TANNAHILL.—The defendants severally object to each and all of the documents in so far as they relate to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and irrelevant and immaterial. And the defendants further object to the introduction of any of the documents in evidence in so far as they relate to the final proof, in support of either of the actions now pending, on the ground that they are matters relating to the final proof, long after the filing of the sworn statement, and irrelevant and immaterial. The defendants severally waive any further identification of the papers. [1866—1536]

Mr. GORDON.—Q. Have you that letter that Robnett wrote you concerning this matter?

A. No, sir.

Q. Do you know where it is?

A. I haven't any idea, no. It has probably been destroyed before now.

Q. Do you know the import of that letter?

A. Which one? Before I saw Mr. Kettenbach on the train?

Q. Yes.

A. No, I can't say that I do know the import, except that it was about a thousand dollars that he offered me.

Q. Wasn't it to the effect that Kettenbach wanted you to deed the property to him for the note?

(Testimony of Benjamin F. Bashor.)

A. Yes, that was the idea, what it amounted to. He wanted me to deed to Kettenbach, said he simply wrote to me as a personal friend, thought that was the best I could get out of it to save the expense of foreclosing it.

Q. And after you had that talk with Kettenbach he told you to go and see Robnett about it?

A. Yes; and when I got home I think I wrote to Robnett and told him I would take \$1100.00 for it.

Mr. GORDON.—We also include in that offer the receiver's receipt and the register's certificate.

Mr. TANNAHILL.—Yes.

Cross-examination.

(By Mr. TANNAHILL.)

Q. You had no arrangement or understanding with Mr. Robnett to sell this land before you made your proof, did you? A. No.

Q. And no such arrangement with Kester and Kettenbach? [1867—1537]

A. No, sir; never a word said among any of us or either of us before the final proof was made.

Q. How long was it after you made your final proof that you sold the land?

A. As near as I remember, it was about—it must have been in the neighborhood of three years, before the conveyance was made.

Q. You had held the land during that time and paid taxes on it?

A. No, I don't think I paid any taxes. They probably took the taxes out of the amount I sold the land for.

(Testimony of Benjamin F. Bashor.)

Q. You was at liberty to sell the land to anyone else, was you?

A. I had offers from other parties, and on my return I wrote to Robnett and told him to that effect. I don't know who the other parties was, but a man by the name of Morrison was representing them, and I don't remember what it was, and I wrote Robnett and told him what they offered me and told him if they would give me any better than that that they could have it.

Q. And you got about \$1,100.00? The \$1,100.00 purchase price included these notes?

A. Yes, sir.

Q. And the mortgage and taxes and so forth was deducted from that?

A. Deducted from the amount they was to pay me for the land—something over \$100.00.

Q. The affidavit that you made at the time you made your filing, your sworn statement, that you had no contract or agreement, either express or implied, direct or indirect, to convey the land to anyone else until after you acquired title, that was true, was it? A. Yes, sir.

Mr. TANNAHILL.—That is all. [1868—1538]

Redirect Examination.

(By Mr. GORDON.)

Q. What did Mr. Morrison offer you for the claim?

A. I think it was \$1,050.00, I think. I know I had an opinion that he must have known what Kettenbach was paying, or something, and he offered a little more than he was paying. I think he offered

(Testimony of Benjamin F. Bashor.)

\$1,050.00, and I think I wrote to Robnett to that effect, and I wrote him that if he would give me \$1,100.00 I would let him have it.

Q. And they allowed you a settlement on that basis? A. Yes, sir. [1869—1539]

[Testimony of Drury M. Gammon, for Complainant.]

DRURY M. GAMMON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Drury M. Gammon, is it not?

A. Yes.

Q. Where do you reside, Mr. Gammon?

A. Dayton, Washington.

Q. Where did you reside in May, 1903?

A. Lewiston, Idaho.

Q. And how long had you resided in Lewiston?

A. What's that?

Q. How long had you resided in Lewiston?

A. It was from 1899 to 1903.

Q. What was your employment in Lewiston at that time? A. Waiter at the hotel.

Q. What hotel?

A. The Bollinger Hotel. Well, at that time I guess it was the Raymond House.

Q. Waiter at the Raymond House?

A. Yes, sir.

Q. Were you married? A. No.

Q. I show you timber and stone lands sworn state-

(Testimony of Drury M. Gammon.)

ment of Drury M. Gammon, dated May 12th. 1903, and ask you if you signed that paper and filled in the same in the land office at Lewiston, Idaho, on or about the date it bears?

A. That is my name all right. I guess I signed it. I don't remember it myself.

Q. Well, that is the paper you signed, isn't it?

A. Yes, sir.

Q. I show you nonmineral affidavit of Drury M. Gammon of the [1870—1540] same date, and ask you if you signed that? Answer yes or no.

A. Yes.

Q. I show you the testimony of Drury M. Gammon given at the final proof August 19th, 1903, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the cross-examination of Drury M. Gammon of the same date, and ask you if you signed that paper? A. Yes.

Q. Who first spoke to you about taking up a timber claim, Mr. Gammon?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim, so far as it relates to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, irrelevant and immaterial.

Mr. GORDON.—Answer the question, Mr. Gammon.

WITNESS.—Mr. Robnett.

Q. Mr. Clarence W. Robnett? A. Yes.

Q. And what did Mr. Robnett say?

(Testimony of Drury M. Gammon.)

A. Well, he asked me if I wanted to take up a timber claim.

Q. And what else did he say?

A. Oh, I told him at first I didn't know, and I asked him how much there was in it if I wanted to take it up. Well, he asked me if I would sell my right, and I told him no, I wouldn't sell my right the way he wanted me to.

Q. Well, now, how did he want you to?

A. He wanted to know if I would take it up and sell it back to him for \$100.00 clear of my expenses, and I told him no.

Q. And what did you say then after that?

A. To Robnett?

Q. Yes.

A. Well, he said he would see me again then.

[1871—1541]

Q. Then did you see him again before you made your entry?

A. No, not until I made my entry; not till I looked at the book in the land office about the land.

Q. You had looked at the book? A. Yes.

Q. Well, I mean before you went up to look at the land you saw him again, didn't you? A. No.

Q. Now, the first time he talked with you didn't he tell you that if you would take up a timber claim he would give you \$150.00 for your right?

A. Yes, sir.

Q. And you told him you wouldn't sell your right for that, didn't you?

A. I told him I wouldn't sell my right for \$150.00.

(Testimony of Drury M. Gammon.)

Q. And how much did you tell him you would sell it for?

A. Well, I told him I wouldn't sell it for anything. I told him I would take it up and deed it to him for so much over and above expenses.

Q. And how much was he to give you?

A. Well, he didn't make any figure on it at the time until we figured up what the expenses would be.

Q. Now, that was the first time you had talked with him, wasn't it?

A. No, not when we figured on the expenses.

Q. Well, that was before you went to look at the land?

A. Yes, before I went to look at the land.

Q. And he was to furnish you the expenses, and you were to deed it back to him and get so much over and above expenses; is that correct?

A. Yes. There was so much timber on the land—he was paying me so much for the timber on the land.

Q. And that was the agreement you had with him before you ever [1872—1542] entered the land at all? A. Eh?

Q. That was the agreement you had with him before you entered the land? A. Yes.

Q. Now, you did go to look at this land, did you?

A. What's that?

Q. You did go to look at the land, did you?

A. Yes.

Q. Now, with whom did you go?

A. Why, I don't remember when I went.

Q. How is that? I say with whom did you go?

(Testimony of Drury M. Gammon.)

A. I went with Charlie Washburn.

Q. Well, who was the locator?

A. Who was?

Q. Who was the locator?

A. Charlie Washburn located me.

Q. Did you pay him anything for locating you?

A. Yes.

Q. When? A. I paid him after I came back.

Q. Where did you get the money to pay him with?

A. I took that out of my own pocket at the time then.

Q. How much? A. \$80.00.

Q. And who paid your expenses up to look at this land?

A. Well, as I say, I paid my own expenses until after I got the land, to see how much it would come to. He didn't say whether he was going to furnish me any money at the time; he asked me if I had the money to do all this, and I told him yes.

Q. Well, who prepared your filing papers?

A. What's that? [1873—1543]

Q. Who prepared your filing papers?

A. Who paid for the filing papers?

Q. No—who prepared them? Who drew them up for you?

Mr. TANNAHILL.—He is hard of hearing, Mr. Gordon.

WITNESS.—Well, I can't remember—Nicker-son, I believe.

Mr. GORDON.—Q. Did you pay him anything?

A. Yes.

(Testimony of Drury M. Gammon.)

Q. Where did you get that money?

A. Out of my pocket.

Q. Well, you went to the land office and made final proof, didn't you? A. Yes.

Q. Where did you get that money?

A. Which money—to prove up?

Q. Yes.

A. I got it at the bank.

Q. Who did you get it from there?

A. I got it from Clarence.

Q. How much was it?

A. Oh, something over \$400.00.

Q. And you took that money which he gave you and went up and made proof with it, did you?

A. Yes.

Q. The same day?

A. No—it was a day or two.

Q. But the same money, was it?

A. Yes, the same money.

Q. Now, did Robnett tell you what you should say at the land office when you went to prove up as to where you got that money? A. No, sir.

Q. Do you remember what you did say? [1874—1544] A. Not all the particulars; no.

Q. Do you remember that you told them at the land office that that money was yours, that you had saved it up, and that you had had it for six months?

Mr. TANNAHILL.—Well, I will lodge an objection relative to any questions with reference to the final proof, on the ground that it is irrelevant and immaterial.

(Testimony of Drury M. Gammon.)

Mr. GORDON.—Q. Do you remember that?

A. Yes.

Q. That wasn't exactly so, was it?

A. Well, I didn't think it was any of their business where I got it at the time.

Q. But that wasn't exactly true, was it, Mr. Gammon? A. Eh?

Q. That wasn't exactly true?

A. No, not at that time. I didn't think it was any of their business, though.

Q. And you made a mortgage to Mr. Robnett at the time that you made your final proof?

A. Yes, sir.

Q. And was that for all the expenses you had been put to? A. Yes, for all expenses.

Q. And did he afterwards tell you who to convey that claim to? A. Afterwards tell me what?

Q. Did he afterwards tell you to whom you should make a deed?

A. Yes; he said to make the deed out to him.

Q. And how much did he give you then?

A. Well, I don't just remember now what it was.

Q. About how much was it?

A. Well, for all expenses, I figured up to him what I sold the land for, why he owed me \$200.00. [1875—1545]

Q. And you got \$200.00? A. Yes, sir.

Q. And did he give you that \$200.00 then?

A. Yes, sir.

Q. And how long was that after you made your final proof?

(Testimony of Drury M. Gammon.)

A. Oh, that was quite a time afterwards. He paid me \$100.00 one time, and then he paid me \$100.00 afterwards—about three months difference, I think.

Q. Did he give you any money the day that you made your final proof, besides that which he gave you for the land office? A. No.

Q. Well, when did he give you the first \$100.00 that he gave you?

A. Oh, that was after I had proved up on it, so as I would deed it back to him.

Q. What were they paying you at the hotel at that time—\$45.00 a month? A. \$40.00.

Q. Now, let's get back to the first conversation you had with Robnett about taking up the claim. Can you hear? A. What's that?

Q. You understand, do you? A. Yes.

Q. Now, what did Robnett say to you?

A. Oh, he just asked me if I wanted to take up a claim.

Q. And what did he say there would be in it for you?

A. Well, he asked me if I would sell my right for \$150.00. I told him no.

Q. And how much did you tell him you would sell your right for?

A. I didn't make any statement of what I would sell it for then.

Q. Well, was he to furnish all the money?

A. Well, the talk was then—he didn't say whether he would furnish it or not at that time. [1876—1546]

Q. And what were you to do to get that money for your right?

(Testimony of Drury M. Gammon.)

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Q. What were you to do to get that money, Mr. Gammon?

A. Oh, he didn't tell me anything. He knew that I knew what I had to do. He knew all about how I should file on the land.

Q. Well, what were you to do with the land to get that money?

A. Well, he said if I wanted to I could sell it back to him.

Q. Well, isn't that what you were to do to get that \$150.00?

A. Well, I told him I wouldn't sell my right that way.

Q. And what way were you to sell your right?

A. I was to let him have it if he would give me what the land would come to after final proof; if the land had so much timber on it, why he was to give me so much a thousand, or million, or whatever it was.

Q. Well, that was your arrangement before you ever went up to the land, was it? A. Yes, sir.

Q. And he carried his part of the arrangement out?

A. Yes, sir.

Q. And you carried your part of it out, did you?

A. Yes, sir.

Q. And you got a little over \$200.00, and he got the land? A. Yes.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Drury M. Gam-

(Testimony of Drury M. Gammon.)

mon, dated May 12th, 1903, the nonmineral affidavit of the same date of Drury M. Gammon, the testimony of Drury M. Gammon at final proof, August 19th, 1903, and the cross-examination of Drury M. Gammon at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and [1877—1547] the register's certificate, dated August 19th, 1903, a certified copy of the patent issued to Drury M. Gammon, dated September 9th, 1904, all relating to the entry of the southeast quarter of the southeast quarter of section 26, and the southwest quarter of the southwest quarter of section 25, and the north half of the northeast quarter of section 35, township 40 north, of range 3 east, of Boise meridian, together with a certified copy of a deed made and executed by Drury M. Gammon, October 9th, 1903, conveying to Clarence W. Robnett, in consideration of \$1.00, the southeast quarter of the southeast quarter of section 26, the southwest quarter of the southwest quarter of section 25, and the north half of the northeast quarter of section 35, in township 40 north, of range 3 east, of Boise meridian, said deed being acknowledged before John E. Nickerson, a Notary Public of Nez Perce County, Idaho, October 9th, 1903, and recorded in the office of the Recorder of Shoshone County at the request of the Lewiston National Bank November 16th, 1904.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but

(Testimony of Drury M. Gammon.)

object to the admission of the same in evidence in support of bills No. 388 and 407, upon the ground that the entry is not involved in those two particular actions, irrelevant and immaterial. And the defendants severally object to the admission of the final proof papers in evidence in support of either of the actions, on the ground that they are matters relating to the final proof, occurring long after the filing of the sworn statement, irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 77, 77A, 77B, 77C, 77D, 77E, 77F, 77G, 77H, 77I, 77J, 77K, 77L, 77M, 77N, and 77-O.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Gammon, you never had any arrangement or agreement with Kester or Kettenbach regarding your claim, did you? A. No, sir. [1878—1548]

Q. You never had any conversation with them at all? A. No, sir.

Q. Neither of these gentlemen were present at any time when you talked with Clarence Robnett regarding it? A. No, sir.

Q. I believe you said that Clarence Robnett first wanted you to sell your right? A. Yes.

Q. And you told him you wouldn't do that?

A. No.

Q. Now, was it because he wasn't giving you money enough, or because you knew it was against the law to sell your right?

A. Well, I knew it was against the law.

Q. And you wouldn't take up a claim in that way?

(Testimony of Drury M. Gammon.)

A. No.

Q. Then your next arrangement was that he was to loan you what money you didn't have? A. Yes.

Q. And then if after you made final proof if you wanted to sell it back to him—sell it to him—why, you could? A. Yes, sir.

Q. There was no obligation on your part to sell it to him?

A. No; I didn't think I was doing anything wrong.

Q. And you took the claim in that way so as to comply with the law? A. How is that, George?

Q. You took the claim in that way so as to comply with the law? You didn't want to violate the law?

A. No.

Q. And you reached a price—an agreement as to the price that you was to have, after you made final proof? A. Yes, sir. [1879—1549]

Q. After you had proved up on it, then you checked up what timber there was on it and made the agreement then? A. Yes.

Q. As to what you was to get for it? A. Yes.

Q. And you had no agreement with him as to the price, or what you should receive, or that you would sell it to him in fact, before you made final proof?

A. No.

Q. Then the affidavit that you made at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly

(Testimony of Drury M. Gammon.)

or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir.

Q. And you furnished all of your own money to pay for your expenses going up to the land, and the filing fees and the location fee? A. Yes, sir.

Q. And you borrowed the money from Robnett to pay the purchase price in the land office when you proved up? A. Yes, sir.

Q. And you gave him a mortgage for it?

A. Yes, sir.

Q. Now, how long after you got the land was it before you sold it to Robnett?

A. Well, as near as I can remember— Well, I want to ask a question on that: In taking up this claim, you know, after you make your final proof, there is a document sent back to Washington, is it, [1880—1550] or something to pay for?

Mr. GORDON.—That is the patent.

Mr. TANNAHILL.—That is the patent.

WITNESS.—Well, it was after I received that patent. I don't know how long it was.

Mr. TANNAHILL.—Q. Something like a year?

A. I guess it was.

Q. And you held the land during that time?

A. Yes, sir.

Q. And never sold it to anybody? A. No, sir.

(Testimony of Drury M. Gammon.)

Q. And you could have sold it to anybody, you say, if they had given you money enough for it?

A. Yes, sir.

Q. You was under no obligation to sell to Robnett unless you wanted to sell to him?

A. No; I wasn't under obligations to sell to anybody.

Q. And as I understood you, you have never had any conversation or agreement of any kind with Kester or Kettenbach? A. No, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Gammon, do you remember of being in my office at Boise on the 22d day of February last?

A. Yes, sir.

Q. And do you remember having a talk with Mr. Smith and me about this case?

A. Yes, I remember talking with you.

Q. Now, do you remember making this statement to me, that about a month before you took up a timber claim, Clarence W. Robnett asked you if you wanted to take up a timber claim, and that you said "How [1881—1551] much would you give me clear of all expenses?" and he said he would give you \$150.00 for my right? Do you remember telling me that?

Mr. TANNAHILL.—Objected to on the ground that it is leading and suggestive, and cross-examination of his own witness.

Mr. GORDON.—Q. Do you remember telling me that?

(Testimony of Drury M. Gammon.)

A. I remember talking with you, but I don't remember telling you that way, Mr. Gordon.

Q. Will you say you didn't tell me that?

A. No, I am not disputing your word. I say I don't remember of telling it that way.

Q. Do you remember that you said this: "He said he would give me \$150.00 for my right, and I said I wouldn't sell my right for that amount, or less than \$200.00." Do you remember telling me that?

A. I remember telling you I wouldn't sell my right for \$150.00.

Q. And that you wouldn't sell it for less than \$200.00?

A. I don't remember. I might have said that.

Q. Do you remember saying this: "That Robnett said he would see me again"? A. Yes.

Q. "And in about a couple of weeks he did see me again. Robnett came back and said he would give me \$200.00 for my right, clear of all expenses, and I said all right." Now, don't you remember telling me that?

A. Well, I may have misunderstood you saying that we got \$200.00 out of the Clearwater.

Q. Well, this is before you went to the land office about this land. Didn't you tell me that that was the understanding you had with Robnett?

A. Well, I don't understand it that way. As I say, you might have misunderstood me in writing it down.

Q. No; I am asking you if you don't remember that—not how I [1882—1552] may have misunderstood you. I am asking you whether you told me that?

(Testimony of Drury M. Gammon.)

A. Well, I don't remember telling you that in that way. I remember having a talk and conversation with you about something, but I wouldn't swear to every word—

Q. Then I asked you who you were to turn this claim over to; do you remember that?

A. You asked me who I was going to turn it over to.

Q. And who did you tell me?

A. I told you all the improvements and everything on it I would turn it to Robnett—turn it back to him.

Q. You say that was your agreement with Robnett?

A. No, I don't remember saying that.

Q. Didn't you say you were—

A. Yes, he was to let me have what money I had to have to make my final proofs of it.

Q. And what were you to do with the claim?

A. Before I gave a mortgage to him, yes.

Q. Well, what were you to do with the claim?

A. What was I to do with the claim?

Q. Yes.

A. Why, if he was to give me what I wanted clear of all expenses for the land, with so much timber on it, I would let him have it if he wanted to.

Q. Wasn't that your agreement with him before you ever went to the land office? A. Oh, no.

Q. What did Robnett say to you about this claim the first time that you ever talked to him about it?

A. Well, I have repeated that. I told you he wanted to know—he asked me if I wanted to sell my right for \$150.00, and I told him no, I didn't want to sell my right for anything.

(Testimony of Drury M. Gammon.)

Q. Now, what were you to do to get that \$150.00 when you first [1883—1553] talked to him about it? Wasn't he to furnish all the money?

A. He never said that to me the first time, no.

Q. Now, how long after the first time did you talk to him again about it?

A. Well, as I said, I don't remember whether it was three weeks or a month or how long it was.

Q. Well, it was before you went to locate on the land that he saw you again? A. Yes, sir.

Q. What did he say on that occasion?

A. He asked me if I had figured on it, and I told him I had, and he asked me if I would go and take it up if he would furnish the money to make the final proof on it, and I said all right, I would give him a mortgage on the land, and he said, "All right, go ahead."

Q. What were you to do with the land?

A. Well, I was to sell it to him, or anybody I pleased.

Q. Wasn't you to sell it to him?

A. Not to him individually, if I didn't want to.

Q. Was there anything said about you not wanting to? A. No.

Q. What was he to furnish you the \$400.00 and expenses for?

A. Well, for the land, I guess, that I gave a mortgage on.

Q. What was there in it for him?

A. I don't know what there was in it for him.

Q. Wasn't it your understanding that you were

(Testimony of Drury M. Gammen.)

going to convey it to him when you took it up?

A. No, no particular understanding, no.

Q. Wasn't it an absolute agreement—not an understanding, but an absolute agreement between you and Clarence Robnett that if he would furnish the money that you would convey it to him for \$200.00 over what it cost you?

Mr. TANNAHILL.—We object to that as improper and unfair. The [1884—1554] witness has testified, and it seems like there is an effort now to get the witness to testify to something that is untrue.

Mr. GORDON.—All that I am trying to get him to testify to is what he has testified to before.

Mr. TANNAHILL.—Well, it makes no difference if he has made any statement before that is not true, he is supposed to state the truth now; and that is trying to take advantage of this witness.

Mr. GORDON.—Q. Who called your attention to this particular piece of land?

A. Why, it was Clarence Robnett.

Q. This very piece of land? A. Yes.

Q. And he told you that Washburn would show the land to you?

A. No. I was thinking about it. Well, Washburn—come to think about it—I believe told me that he knew a good piece of land if I wanted to take one up. I knew he was—well, I don't know what they call it—well, a fellow that locates you, I guess that's what they call them. But this piece of land that I filed on Mr. Robnett is the one that spoke about it.

(Testimony of Drury M. Gammon.)

He told me that piece was there if I wanted to take it.

Q. He told you the piece was there that you located on? A. Yes, sir.

Q. And that is the piece you located on and conveyed to him, is it not?

A. Well, it is the one I sold back to him, yes.

Q. And you got your \$200.00?

A. Yes—something over \$200.00.

Q. Well, how much over \$200.00?

A. Well, I won't say how much it was—a few dollars over, though.

At this time an adjournment was taken until tomorrow morning at ten o'clock A. M. [1885—1555]

On Tuesday, September 13, 1910, at 10 o'clock A. M., the hearing was resumed.

[Testimony of Michael J. Dowd, for Complainant.]

MICHAEL J. DOWD, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Michael J. Dowd? A. Yes, sir.

Q. Where do you reside, Mr. Dowd?

A. Spokane.

Q. How long have you resided in this vicinity?

A. It must be about eight years now; very close to eight years.

Q. What was your business in February, 1906?

A. Woodsman.

Q. Were you a woodsman for yourself or were you connected with some company?

(Testimony of Michael J. Dowd.)

A. I was working for the Shevlin-Clark Company at that time.

Q. That is a timber company?

A. Yes, sir, a timber company, a timber holding company.

Q. Did you at that time know Mr. George H. Kester? A. Yes, sir.

Q. And Mr. William F. Kettenbach?

A. Yes, sir.

Q. And Mr. William Dwyer? A. Yes, sir.

Q. Were you acquainted with Mr. J. G. Fralick?

A. Yes, sir.

Q. Do you know what Mr. Fralick's employment was in February [1886—1896] 1906?

A. He was chief clerk for Shevlin & Clark at that time.

Q. Who was Mr. Flewelling?

A. Mr. Flewelling didn't come in on the scene for some time after that.

Q. Was he afterwards connected with the Shevlin-Clark Company?

A. Well, the Shevlin-Clark Company, as I understood it, sold out to what is called the Flewelling Company, the Monarch Timber Company; it was called the Monarch Timber Company after that.

Q. Now, in the fore part of February, 1906, did you have any dealings with either Mr. Dwyer or Mr. Kester, the defendants in this case, relative to their timber holdings?

A. I went down there with a letter from Mr. Fralick to Mr. Dwyer.

(Testimony of Michael J. Dowd.)

Q. The letter that you were given by Mr. Fralich to Mr. Dwyer, did you deliver that to Mr. Dwyer?

A. I delivered that to Mr. Dwyer, yes, sir.

Q. And you have not the original? A. No, sir.

Q. I show you what purports to be a copy of that letter, dated February 6th, 1906, and ask you if that is a copy of the letter?

A. I think that is about the same.

Q. That was signed—

A. J. G. Fralick.

Mr. GORDON.—I will read that letter in evidence.

Mr. TANNAHILL.—The defendants object to the letter upon the ground that it is immaterial, but make no point on the question of the identification of the letter.

Mr. GORDON.—(Reading:)

“William Dwyer,

Lewiston, Idaho. [1887—1557]

Dear sir: This will be presented to you by Mr. M. J. Dowd, whom I have sent down to take a general look at your timber. Give him all the information you can to enable him to report fully to me.

Yours truly,”

Q. You say the original of that letter was signed by J. G. Fralick? A. Yes, sir.

Q. Had you ever met Mr. Dwyer before that time?

A. I had met him in a general way different times as a woodsman, yes, sir.

Q. Had you had any negotiations with him at that time concerning his timber holdings? A. No, sir.

Q. And you were at that time, I understand, repre-

(Testimony of Michael J. Dowd.)

sending— A. Shevlin & Clark, yes, sir.

Q. And were making that visit to Mr. Dwyer as the representative of them? A. Yes, sir.

Q. And that letter was written by Mr. Fralick and was delivered to you, and you delivered it to Mr. Dwyer? A. Yes, sir.

Mr. TANNAHILL.—What volume have you got there, Mr. Gordon?

Mr. GORDON.—I have got volume 4, 1605.

Mr. TANNAHILL.—At what page are you reading?

Mr. GORDON.—1364.

Q. Do you remember how long after that letter was dated you delivered it to Mr. Dwyer?

A. I delivered it that same day, the 14th of February, if I [1888—1558] remember right.

Q. You delivered it to Mr. Dwyer shortly thereafter? A. Yes, sir.

Q. What did Mr. Dwyer do and say at the time that you delivered the letter?

A. He introduced me to Mr. Kester.

Q. What Mr. Kester? A. George H. Kester.

Q. Did you have any talk with Mr. Dwyer before he introduced you to Mr. Kester about this timber?

A. If I remember right, I told him I wanted it and was after it.

Q. What did you tell him you was after?

A. I told him I was after timber.

Q. Did you tell him what timber you were after?

A. Well, I was down to see about their timber.

Q. And he introduced you to Mr. George Kester?

A. Yes, sir.

(Testimony of Michael J. Dowd.)

Q. Where did you see Mr. Kester?

A. I saw Mr. Kester in the room off the bank; I think they call that the directors' room, if I remember right.

Q. What bank was that,—the Lewiston National Bank?

A. The bank Mr. Kester was connected with; I don't know what they did call it myself. It seems to me it was the First National Bank.

Q. No; it was the Lewiston National Bank.

A. The Lewiston National Bank.

Q. Did Mr. Dwyer remain with you and Mr. Kester? A. It seems to me he did, yes.

Q. Now, will you state the conversation that occurred between you and Mr. Dwyer and Mr. Kester.
[1889—1559]

A. Well, it was so long ago, Mr. Gordon, that I have pretty near forgotten all about it. If I remember right, I told him what I wanted, that I was representing Shevlin & Clark, and they were in the field to buy timber, provided they could get it in sufficient quantities to justify them to invest.

Q. What did Mr. Kester say?

A. He told me, if I remember right, that the timber was for sale.

Q. What timber?

A. Their timber; that they had timber for sale.

Q. And did you ask him anything about how long a time he would give you to look over the timber?

A. Yes; I wanted to get time sufficient to justify us in sending men in and looking over the timber, wanted time sufficient to look it over and notch it.

(Testimony of Michael J. Dowd.)

Q. What did Kester say?

A. He told me he didn't care to be tied up, if I remember right, but that he would give me a letter that would protect me just as well as notching it.

Q. Did he give you the letter? A. Yes, sir.

Q. And this conversation was still there in the bank, was it? A. Yes, sir.

Q. Did Mr. Kester prepare a letter for you?

A. I don't know who prepared it.

Q. Did he give you a letter?

A. He gave me a letter.

Q. I show you a letter dated February 14th, 1906, addressed to Shevlin-Clark Timber Co., signed George H. Kester, and ask you if that is the letter Mr. Kester gave you?

A. Yes, sir, I think that is the same letter. [1890—1560]

Mr. GORDON.—I will read the letter in evidence.

Mr. TANNAHILL.—I've got no objection to it; it's a pretty good letter.

Mr. GORDON.—(Reading:)

[**Exhibit No. 79.**]

“**LEWISTON NATIONAL BANK**
of Lewiston, Idaho.

Capital & Surplus \$200,000.

W. F. Kettenbach, President.

J. Alexander, Vice-President.

Geo. H. Kester, Cashier.

Lewiston, Idaho, Feb. 14, 1906.

Shevlin-Clarke Timber Co.,
Spokane, Washington.

Gentlemen:

Referring to our timber in the Clearwater Country, we will grant you the right to cruise the same, provided it is done before April 1st, and further provided that if you avail yourselves of this consideration, that you are to have cruisers on the land by the 25th of this month. Our prices on this land are as follows:

Land in Twp. 38-4-5-6, East; Twp. 39-5 & Twp. 40-6 East, at \$25.00 per acre; Lands in Twp. 39-4 East, \$30.00 per acre; Lands in Twp. 39-3 East at \$15.00 per acre.

It is a condition of this letter that in case you do not purchase this land, that you will furnish us your detailed estimates on our lands in the above townships.

Please acknowledge receipt, and if you intend to proceed here-under, acknowledge conditions herein.

Yours truly,
GEO. H. KESTER.”

(Testimony of Michael J. Dowd.)

Mr. GORDON.—I offer the letter in evidence.
[1891—1561]

Said letter was thereupon marked by the stenographer as Exhibit 79.

Mr. GORDON.—Q. Mr. Dwyer was present when that letter was handed to you by Mr. Kester?

A. Yes, sir.

Q. Now, was that letter written the same day you delivered the letter from Mr. Fralick to Mr. Dwyer?

A. Yes, sir.

Q. To whom did you deliver the letter that you have just identified as having been given you by Mr. Kester? A. J. G. Fralick.

Q. Well, now, was anything said about the description of their lands at that time that you were to go over?

A. They were to make out plats for me showing me the descriptions of the land.

Q. Now, what did Mr. Kester say about that?

A. He said his woodsman would make them out.

Q. Who was his woodsman? A. Mr. Dwyer.

Q. And did you and Mr. Dwyer go off to have the descriptions given you?

A. Yes, sir; we made one up; we started that evening and finished the next day.

Q. Where did you go to?

A. Upstairs to some room that Mr. Dwyer had over the bank building.

Q. And in what form did he give you these descriptions?

A. Gave them to me in township plats.

(Testimony of Michael J. Dowd.)

Q. I show you township plats of township 37, range 6 east, [1892—1562] township 38, range 6 east, township 38, range 5 east, township 38, range 4 east, township 39, range 3 east, township 39, range 4 east, township 39, range 5 east, township 40, range 6 east, all of Boise meridian, and ask you if they are the plats that Mr. Dwyer made out for you, representing their holdings of timber that you were to cruise and to go over with the view of buying them for the Shevlin-Clarke people?

A. Yes, sir; that is the—

Q. They are the plats, are they? A. Yes, sir.

Q. Now, do you remember whether these marks down the side of the plat, this on township 27, the figures in a circle in the left-hand corner, 25, and township 38, 25, and township 38, the figures at the bottom and the circle marked 25, and township 38—4, were the figures at the left-hand corner of the circle, 25, they represented the price per acre that those lands were to be sold for by Kester and Dwyer?

A. I don't know as to that, Mr. Gordon. The letter was sent to Mr. Fralick, explaining that, and that was inclosed, so I didn't see it.

Q. And did you deliver that letter that you have identified and these plats that you have identified to Mr. Fralick? A. Yes, sir, I did.

Q. And what date, relative to the date you received the letter and the plats from Mr. Kester and Dwyer?

A. I think I delivered those and the letter I received from Mr. Kester on the 16th of February; I

(Testimony of Michael J. Dowd.)

am pretty sure it was the 16th.

Q. As I understood, the marks in the various sections in the township plats that you have shows was the land that they represented as theirs, and that you were to look over with the view of purchasing?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The plats show that the land was some they owned and some [1893—1563] that could be had; they didn't show that it was all their land.

Q. Which did they tell you was theirs and which wasn't theirs?

A. Those with the circles it seems to me were the lands that could be had, could be blocked up with theirs and—

Q. This letter referred to those plats, did it not?

A. Yes, sir.

Q. This letter says: "Referring to our timber in the Clearwater country, we will grant you the right to cruise the same, provided it is done before April 1st, and further provided that if you avail yourselves of this consideration, that you are to have cruisers on the land by the 25th of this month. Our prices on this land are as follows": Then it gives the figures, Mr. Kester in that letter refers to "our timber land." Now, what was said about—

A. He referred to his timber land but this other could be picked up or we could pick it up ourselves. It showed that it could be blocked up with this block of timber.

Mr. GORDON.—We offer those plats in evidence.

(Testimony of Michael J. Dowd.)

Said plats were thereupon marked by the stenographer as Exhibit 80.

Mr. TANNAHILL.—We object to the plats being admitted in evidence, upon the ground that they are irrelevant and immaterial.

Mr. GORDON.—Q. Did you talk with Mr. Kester further after you received those plats?

A. I don't remember that I did, Mr. Gordon.

Q. You said you delivered that letter and those plats to Mr. Fralick? A. Yes, sir.

Q. Do you know what Mr. Dwyer prepared those plats from?

A. It seems to me he had blue print township plats up in his room. [1894—1564]

Cross-examination.

(By Mr. TANNAHILL.)

Q. You knew that Mr. Dwyer was a timber cruiser, did you not, Mr. Dowd? A. Yes, sir.

Q. And you have been engaged in cruising timber to some extent yourself? A. Yes, sir.

Q. It is customary for timber cruisers to have blue prints and descriptions of the land that they have cruised, is it not? A. Yes, sir.

Q. And when you go out and cruise a tract of land for a man you make a record of it and keep that in your office, regardless of the fact that you may not buy the land? A. Yes, sir.

Q. You understood that Mr. Dwyer had cruised and estimated all of those lands offered by Mr. Dwyer and Kester, did you not?

A. I understood that he, being his woodsman, he

(Testimony of Michael J. Dowd.)

would have done it.

Q. By reason of the fact that he had cruised the timber and had these blue prints and descriptions in his office, you went up to his office to get the descriptions?

A. Yes, sir; because Mr. Kester said he was his woodsman.

Q. Mr. Kester or Mr. Dwyer neither one told you that Dwyer owned any interest in the lands, did they? A. No, sir, not that I know of.

Q. Mr. Dwyer didn't tell you that he owned any interest in the lands, did he? A. No, sir.

Q. And you didn't understand that he owned any interest in the lands? A. I did not. [1895—1565]

Q. Your understanding was that the lands belonged to Kester and Kettenbach? A. Yes, sir.

Q. This plat was not handed to you for the purpose of showing title to these lands, was it?

A. I didn't understand it that way; I understood it was lands that could be controlled and had in this vicinity.

Q. And on that plat you understood there was some lands of relatives of Kester and Kettenbach that could be purchased, did you not?

A. I didn't know whether they were relatives or not, but lands that could be had in that vicinity.

Q. And those lands marked by a circle, you understood that they was lands that were neither owned nor controlled by Mr. Kester and Mr. Kettenbach?

A. I understood they was outside lands, owned by

(Testimony of Harvey J. Martin.)

individual holders, I understood at the time.

Mr. TANNAHILL.—That is all. [1896—1566]

[Testimony of Harvey J. Martin, for Complainant.]

HARVEY J. MARTIN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Harvey J. Martin?

A. Yes, sir.

Q. Where do you reside, Mr. Martin?

A. South 419 Stevens, Spokane.

Q. You live at Spokane, Washington?

A. Yes, sir.

Q. How long have you lived at Spokane?

A. Oh, I have lived here about 24 years.

Q. Do you know Mr. J. B. West, of Lewiston, Idaho? A. Yes, sir.

Q. Do you know the defendants, Kester, Kettenbach and Dwyer? A. Yes.

Q. How long have you known Mr. West?

A. Oh, I have known him for about a little over two years, I guess.

Q. And will you state whether or not you ever had any timber transactions with Mr. West? This is merely preliminary.

A. Well, yes. I don't know as you would call them transactions. We had a whole lot of correspondence with reference to timber deals that we were trying to work up. They were never consummated.

Q. Now, I will ask you whether or not you and Mr.

(Testimony of Harvey J. Martin.)

West entered into an agreement by which he was to pick up a number of timber claims that he was to purchase from the entrymen, and that you were to finance the scheme? A. Yes.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

Mr. GORDON.—I say it is just leading up to the transactions as [1897—1567] to which I wish to inquire about later.

Q. Well, did you ever consummate that arrangement with Mr. West? A. I never did.

Q. Now, did Mr. West ever bring you in contact with Mr. Dwyer and Mr. Kester and Mr. Kettenbach, relative to their timber holdings?

A. Yes; he brought me in touch with Kettenbach and Dwyer.

Q. Well, now, state when that was.

A. It was on the 24th of November, 1909.

Mr. TANNAHILL.—Did you say Kettenbach and Dwyer, or Kettenbach and Kester?

A. Kettenbach and Dwyer were the people I met in Lewiston. Kester was here at the time.

Mr. GORDON.—Q. I show you a letter dated Lewiston, Idaho, November 23, 1909, addressed H. J. Martin, Esq., and signed J. B. West. I will ask you whether you received that letter? A. Yes.

Q. Through the mails, in due course?

A. Yes, sir.

Q. And you are acquainted with the signature of J. B. West? A. Yes, sir.

Q. And that is his signature to that letter?

(Testimony of Harvey J. Martin.)

A. That's right.

Mr. GORDON.—I offer the letter just identified by the witness in evidence.

Mr. TANNAHILL.—Objected to as immaterial.

Said letter was thereupon marked by the Reporter as Exhibit 81.

Mr. GORDON.—Q. Now, state what Mr. West said to you, and whether or not he was representing or represented that he was representing Kester, Kettenbach and Dwyer relative to their timber land.

A. He told me that he could handle their timber lands. [1898—1568]

Q. Well, now, proceed and tell what he said, and what you did in response to his requests?

Mr. TANNAHILL.—We object to that as immaterial.

Mr. GORDON.—Answer the question.

A. As near as I can remember it was some time prior to the date of this contract, probably some several weeks; I met Mr. West in Spokane here, and our other scheme wasn't progressing very rapidly, and he suggested that he could get the Kester-Kettenbach tract any time at a very reasonable price, and we talked over the details at the time about what he could get it for, and I made out a list of data on it so that I could put up a kind of a preliminary proposition to the intending purchaser, and went to work on it; and we put the Kester and Kettenbach tract up in three or four different places—offered it for sale—and among others it came up to this man Bissell.

(Testimony of Harvey J. Martin.)

Q. Who is Bissell?

A. He is the man that was supposed to represent these purchasers for whom we got this contract—this option of ten days—and they drew up—or at least that is the way it was represented to me; I didn't see them do it—that form of contract there that I carried down to Lewiston.

Q. Who drew this up?

A. These clients of Bissell's, supposedly; that is what I was told.

Q. And you were operating with them?

A. Yes, sir.

Q. With a view of having them buy the Kester, Kettenbach and Dwyer lands; is that right?

A. They represented that if I could get that signed up by the owners that they could make a deal of it.

Q. And you went to Lewiston, and did you meet Mr. West? A. Yes.

Q. And that was on the 24th of November, 1909, was it not? [1899—1569]

A. Yes, sir. I remember it because it was Thanksgiving.

Q. And did Mr. West introduce you to Mr. Dwyer and Mr. Kettenbach? A. Yes.

Q. William F. Kettenbach. A. Yes, sir.

Q. And Mr. William Dwyer?

A. Yes, sir; he introduced me to William Dwyer and William F. Kettenbach.

Q. Now, where did this introduction take place?

A. In Mr. West's office.

Q. I show you a blank form of a contract, dated

(Testimony of Harvey J. Martin.)

November, 1909, and I will ask you whether or not that is the contract you have referred to that Bissell suggested that you get signed up by the owners?

A. Yes, sir; that is the one I carried to Lewiston.

Q. And when you carried that to Lewiston what did you do with it?

A. I submitted it to Mr. West and he in turn submitted it to Mr. Kettenbach, and Mr. Kettenbach said that he would draw up a contract, or have one drawn up, as a substitute for that; he wouldn't agree to that.

Mr. GORDON.—I offer that blank form of contract in evidence.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant, incompetent and immaterial.

Said blank form of contract was thereupon marked by the Reporter as Exhibit 82.

Mr. GORDON.—Q. And did Mr. Kettenbach proceed to have prepared a contract on that day?

A. Yes, sir.

Q. I show you a contract dated November 24th, 1909, or a memorandum of agreement as it is headed, in which it is agreed to sell to J. B. West certain property therein mentioned, and signed W. F. Kettenbach [1900—1570] and George H. Kester. I will ask you whether or not that is the contract that Mr. Kettenbach had prepared? A. Yes, sir.

Q. And that is his signature to it? A. Yes, sir.

Q. And was it signed by Mr. West at that time?

A. No, it wasn't signed by Mr. West; it was signed by Mr. Kettenbach.

(Testimony of Harvey J. Martin.)

Q. Was that delivered to you by Mr. Kettenbach?

A. Yes, sir.

Q. And did you see it signed by Mr. Kester?

A. Yes, sir.

Q. Where was that?

A. That was in Mr. Kester's office in the Mohawk building.

Q. In Spokane? A. Yes, sir.

Q. And you took the contract there for that purpose, for him to sign? A. Yes, sir.

Mr. GORDON.—We offer that contract in evidence.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant, incompetent and immaterial.

Said contract was thereupon marked by the Reporter as Exhibit 83.

Mr. GORDON.—Q. Now, at the time of the signing of that contract was a plat given you by Mr. Kettenbach? A. Yes, sir.

Q. I show you plat signed George H. Kester and William F. Kettenbach, and pencil marks drawn through the signatures of them, and ask you if you know that to be the signatures of William F. Kettenbach and George H. Kester to that plat?

A. Well, I never saw those signatures put on.
[1901—1571]

Q. What is that?

A. I never saw those signatures put on this plat.

Q. No, but I mean from your knowledge of their signatures, are they their signatures?

A. Well, I judge from looking at the signatures

(Testimony of Harvey J. Martin.)

on the other contract that they were the same.

Mr. GORDON.—Is there any contention that they are not the signatures of Kester and Kettenbach, that have been marked out with lead pencil?

Mr. TANNAHILL.—Why, I don't know. I haven't examined them. (Said plat was handed to Mr. Tannahill, who examined the same.)

Mr. TANNAHILL.—I think they are, still I don't know, but I believe they are, though.

Mr. GORDON.—Q. And you say that that plat was given you by Mr. William F. Kettenbach just after the signing of that contract?

A. I don't know whether it was after or before, but it was right at that time.

Q. Now, what did he say about that plat at that time?

A. Well, he gave me that plat in answer to my demands for some kind of a checking of the property, in order to present to my people along with this contract when I returned, or this option.

Q. Well, what property did that represent?

A. That was supposed to represent the property that they had optioned to some other people prior to this time.

Q. Well, whose property was it represented to be?

A. Well, it was supposed to be the property that they were selling us, or nearly so. Of course, he stipulated that that plat was not exactly correct, but that he would later furnish me with a correct plat, and this one could be used as a substitute in the

(Testimony of Harvey J. Martin.)

meantime in the preliminary negotiations for this purchase.

Q. Well, was anything said about whether it was a plat of their [1902—1572] holdings, or property that they represented?

A. He said that was approximately a plat of their timber proposition, as I remember it.

Q. Well, did he say whether it was their property, or property that they represented?

A. Well, I couldn't swear exactly what was said. I know what my impression was.

Q. Well, what was your impression?

A. My impression was that that was representing their property—that plat—approximately.

Mr. GORDON.—We offer that plat in evidence that has been identified by the witness.

Mr. TANNAHILL.—Objected to as irrelevant, incompetent and immaterial.

Said plat was thereupon marked by the Reporter as Exhibit 84.

Mr. GORDON.—Q. Now, did anyone give you a revised plat of that property later? A. Yes, sir.

Q. Who gave you that?

A. Mr. William Kettenbach.

Q. And where did he give you that plat?

A. In my office.

Q. At Spokane?

A. He made it in my office from data that he had in his possession when he came up.

Q. Now, do you know what you did with that plat?

A. I turned it over to this man Bissell.

(Testimony of Harvey J. Martin.)

Q. And do you know what became of it when Mr. Bissell returned it?

A. Why, I am a little bit in doubt as to whether Mr. Bissell ever returned that. I am inclined to believe that Mr. William Kettenbach [1903—1573] turned over to me these township plats which he brought up with him in order to make the main plat there.

Q. Yes?

A. I am of the opinion that he turned these over to me, and those are the plats that I turned back to Mr. George Kester, and I believe that the originals that Mr. Kettenbach made from this is still in the possession of these people, whoever they are, I don't know; I never met them.

Q. Well, did you make a copy of that plat?

A. Yes.

Q. And have you a copy of it here?

A. That is a copy that I made, right there.

Q. And this is an exact copy of the plat that Mr. William F. Kettenbach delivered to you?

A. Yes, sir, that is a copy of it.

Q. And this chart is identically the same as the one that Mr. Kettenbach—

A. I made that myself from the one that he attached here.

Mr. GORDON.—Now, we offer this plat and chart attached in evidence.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant and immaterial.

Said plat with chart attached was thereupon

(Testimony of Harvey J. Martin.)

marked by the Reporter as exhibit 85.

Mr. GORDON.—Q. Now, I notice across the top of that chart, “township 37, 5 east, B. M.,” and then another column headed “Clear title,” then four X’s adjoining, and then “Lites pendentes,” and underneath that “5C,” and then to the right of that “Final Receipt.” I wish you would explain that chart as Mr. Kettenbach explained it to you.

A. Well, that is in explanation of the plat.

Q. Yes. [1904—1574]

A. These marked “X,” these four, these represent forties, you see.

Q. And what does this represent?

A. Well, that would represent four forties in that township.

Q. Those were township 37, 5 east, Boise meridian? A. Yes, sir.

Q. And then, under the head of “Clear title” is “4-X.” Now, will you explain what that means?

A. That means that there is four forties in that particular township upon which the title is clear.

Q. And then, in the same township there are five forties that there is a lis pendens on; is that right?

A. Yes.

Q. And then, the numbers under “Final Receipt” mean that final receipts have issued in the several townships to the several forties there represented?

A. Yes, sir.

Q. Now, in your talk with Mr. Kettenbach at the time that he signed this contract that you have identified of November 24th, 1909, did he tell you or in-

(Testimony of Harvey J. Martin.)

dicating whose property he was giving you an option on? A. Well, I understood it was theirs.

Q. Who do you mean by "theirs"?

A. Well, I supposed at that time that it belonged to Mr. Kettenbach and Mr. Kester.

Q. And who led you to believe that?

A. Well, I assumed that from my conversation with Mr. West. He was talking all the time about selling the Kester and Kettenbach tract of timber.

Q. And you say Dwyer was present at these conversations?

A. Yes, he was present on the 24th.

Q. And was anything said between Mr. Kettenbach and you and Mr. [1905—1575] Dwyer to indicate that Mr. Dwyer had an interest in that property?

A. Well, not that I recall, upon that date.

Q. Well, subsequent to that did Mr. Kettenbach—

A. Well, I think it was after that that Mr. West told me that Mr. Dwyer had an interest—a small interest.

Mr. TANNAHILL.—I move to strike out that answer, on the ground that it is irrelevant and immaterial, and a statement made by a third party and not in the presence of either of the defendants, and the defendants could not be bound by it.

Mr. GORDON.—Q. Well, was Mr. West present at the time that arrangements were made between you and Dwyer and Kettenbach about the signing of that contract?

A. He was present at the conference between Mr.

(Testimony of Harvey J. Martin.)

Kettenbach and Mr. Dwyer and myself; Mr. Kester was not there.

Q. Was Mr. Dwyer consulted about the signing of that contract?

A. He was consulted quite extensively at that meeting in reference to the character of the timber, and in reaching a decision there upon the percentages of the different species that were inserted in the contract, as I remember. They seemed to look upon him as being the practical timber man. I supposed at the time he was simply their cruiser. I didn't know that he had an interest.

Q. And was anything said about the interest that Kester had in the land?

A. Why yes; it was understood that that contract was subject to Mr. Kester's signature.

Q. Well, was anything said about the character of the interest that he had?

A. Not that I know of at that time, no.

Q. And was anything said later about the holdings of Kester and Dwyer?

A. Yes; there was once after that Mr. West told me that Mr. [1906—1576] Kester—

Mr. TANNAHILL.—Now, we move to strike out—we object to any statement of the witness relative to what Mr. West told him, unless the other defendants were present.

Mr. GORDON.—Answer the question.

A. Mr. West intimated that Mr. Kester's holding was of a minor nature, and that William Kettenbach—I was led to believe that William Kettenbach

(Testimony of Harvey J. Martin.)

was practically the whole thing; that is, that he was the man that we had to agree with, and that everything else would be all right, and that he would line the others up; that was the intimation.

Q. And who were the others he was to line up?

A. Mr. Kester and Dwyer, I suppose.

Q. I show you a letter here dated December 2, 1909, addressed H. J. Martin, signed Kester & Kettenbach, by George H. Kester. I will ask you whether or not Mr. Kester presented that to you?

A. He did.

Q. And what were the circumstances of his presenting that to you?

A. Well, Mr. Bissell came to me—

Mr. GORDON.—One minute just before that. I offer that letter in evidence, and read it into the record. (Reading:)

[Exhibit No. 86.]

“Dec. 2nd, 1909.

“Mr. H. J. Martin,

“City.

“Dear Sir:—

“This is to certify that the Lewiston National Bank has no interest in our timber holdings.

“Yours truly,

“KESTER & KETTENBACH,

“By GEO. H. KESTER.”

Said letter was thereupon marked by the Reporter as Exhibit 86.

Mr. GORDON.—Q. Now, what were the circumstances of Mr. Kester writing that [1907—1577]

(Testimony of Harvey J. Martin.)

letter and presenting it to you?

A. Well, Mr. Bissell was supposed to represent these intending purchasers, and he came to me and asked that question.

Q. What question?

A. He asked me if this particular bank had any interest in this timber, and I told him that I really didn't know, but I didn't think so. He says, "Can you get a statement from them in which they set forth that this bank has no interest?" and I says, "I guess I can, if that is the fact," and so I went and asked Mr. Kester about it, and he said that the bank had no interest, and I asked him if he would give me a signed statement to that effect, and he said he would, and that is what he gave me.

Q. And that had reference to the timber set out in this plat which you have identified, and referred to in the plat? A. Yes, sir.

Q. I show you a letter dated November 24th, 1909, signed J. B. West, and purporting to be an authorization from J. B. West to H. J. Martin to exercise power vested in him in the memorandum of agreement that is in evidence, and I will ask you if that is Mr. West's signature to that paper, and if you received that in due course through the mail?

A. Why, that is his signature, and my recollection is that I received it there right in his office.

Q. He gave it to you then? A. Yes.

Mr. GORDON.—I offer that letter in evidence.

Mr. TANNAHILL.—Objected to as immaterial.

Said letter was thereupon marked by the Reporter

(Testimony of Harvey J. Martin.)

as Exhibit 87.

Mr. GORDON.—Q. I show you a letter dated December 2d, addressed H. J. Martin, signed J. B. West, and ask you if you received that letter from Mr. J. B. West? A. Yes, sir. [1908—1578]

Mr. GORDON.—I offer that letter in evidence.

Mr. TANNAHILL.—I object to it upon the ground that it is irrelevant, incompetent and immaterial.

Said letter was thereupon marked by the Reporter as Exhibit 88.

Mr. GORDON.—Q. I show you a letter dated December 25th, 1909, addressed H. J. Martin, signed J. B. West, and ask you if you received that letter from Mr. West?

A. Yes, sir.

Q. That is his signature, is it not?

A. Yes, sir.

Mr. GORDON.—We offer that letter in evidence.

Mr. TANNAHILL.—Objected to as irrelevant, incompetent and immaterial, and hearsay, and it cannot be binding upon the defendants.

Said letter was thereupon marked by the Reporter as Exhibit 89.

Mr. GORDON.—Q. I show you a letter dated December 28th, signed H. J. Martin, addressed to J. B. West, and ask you if that is a copy of the letter which you sent to Mr. West? A. Yes, sir.

Mr. GORDON.—We offer that in evidence.

Mr. TANNAHILL.—Objected to as irrelevant, incompetent and immaterial.

Said letter was thereupon marked by the Reporter

(Testimony of Harvey J. Martin.)

as Exhibit 90.

Mr. GORDON.—Q. I show you a letter dated December 24th, 1909, addressed to J. B. West, Lewiston, Idaho, and ask you if that is a copy of a letter you wrote and mailed to Mr. J. B. West?

A. Yes, sir.

Mr. GORDON.—I offer this letter in evidence.

Mr. TANNAHILL.—The same objection.

Said letter was thereupon marked by the Reporter as Exhibit 91. [1909—1579]

Mr. GORDON.—Q. I show you a letter dated December 30th, 1909, addressed to H. J. Martin, which purports to be signed by J. B. West, and I will ask you if that is the signature of J. B. West, and whether you received that in due course?

A. Yes, sir.

Q. On or about the date it bears? A. Yes, sir.

Mr. GORDON.—I offer that letter in evidence.

Mr. TANNAHILL.—The same objection.

Said letter was thereupon marked by the Reporter as Exhibit 92.

Mr. GORDON.—Q. Did you ever have a talk with Mr. Kester about giving you a commission on this matter?

A. No, I don't remember of ever having a talk with him on the commission. The commission was all provided for. We got the proposition on a net price, with commission added. I can tell you the circumstance of what suggested that to you, probably.

Q. I wish you would?

(Testimony of Harvey J. Martin.)

A. Mr. Kester came into my office after this option had expired, and we were still working on it and expecting these people to come through, and informed me that I need not put any further labor on it; that they would not sell now—at that time—and that is what brought out all this information about me getting the impression that Mr. Kester was a minor factor in the deal, because I immediately took up my troubles with West in regard to that, and he told me never to mind him; that Billy was the only one to see, and he thought he would come through.

Q. I show you a letter dated January 31st, 1910, Lewiston, Idaho, and addressed H. J. Martin, Esq., and ask you whether that is J. B. West's signature to that letter? A. Yes, sir. [1910—1580]

Q. And you received that in due course through the mail, did you? A. Yes, sir.

Mr. GORDON.—We offer that letter in evidence.

Mr. TANNAHILL.—The same objection.

Said letter was thereupon marked by the Reporter as Exhibit 93.

Mr. GORDON.—Q. I show you a letter dated February 5th, 1910, Lewiston, Idaho, addressed to H. J. Martin, Spokane, signed J. B. West, and ask you if that is J. B. West's signature to that letter?

A. Yes, sir.

Q. And whether or not you received it in due course through the mail? A. I did.

Mr. GORDON.—We offer that letter in evidence.

Mr. TANNAHILL. The same objection.

(Testimony of Harvey J. Martin.)

Said letter was thereupon marked by the Reporter as Exhibit 94.

Mr. GORDON.—Q. Mr. Martin, all of this correspondence which you have identified here has reference to the property contained in the memorandum of agreement that you have identified and which is in evidence, and the plat that was delivered to you by Mr. Kettenbach several days later, which you have identified by a copy? A. Yes, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. What Government official did you first talk to in regard to your business transactions with Mr. West?

A. That is a hard question to answer. The first one that I actually knew to be an official was Mr. Johnson and Mr. Smith together, I think, in Boise.

Q. In Boise? A. Yes, sir. [1911—1581]

Q. Did you talk with anyone before that whom you supposed was a Government official?

A. Well, what I meant by that intimation, I probably talked in my office with agents of the Government in connection with this land deal, but I supposed at the time they were *bona fide* timber purchasers.

Q. Was that before or after you took up this correspondence with Mr. West?

A. Well, it was during the time that I was corresponding with Mr. West.

Q. During the time? A. Yes.

Q. And did you tell these people about your cor-

(Testimony of Harvey J. Martin.)

respondence with Mr. West—those parties who were talking to you then?

A. Oh, I think I quoted Mr. West pretty generally, and relied on Mr. West to handle that end of the deal.

Q. Now, had you any talk with anyone whom you thought was a Government official before that?

A. No. I didn't think—I had no suspicion that they were Government officials at the time. I have simply reached that conclusion since.

Q. And did you take these letters and correspondence with you to Boise when you went down there?

A. Yes, sir.

Q. And you submitted them to Mr. Smith and Mr. Johnson down there, did you? A. Yes, sir.

Q. And where has this correspondence been since that time?

A. It has been in the possession of the Government officials, I suppose; it hasn't been in mine.

Q. Now, you say that something happened in these transactions that gave you the impression from what Mr. West said or represented, that Mr. Dwyer had some interest in this land. What was it that gave [1912—1582] you that impression?

A. Well, I had a conversation with West—you see we were in the attitude of our option having expired, that we were virtually dependent upon their good graces in the way of consummating the deal, provided these people we had on came through; we were expecting them all the time to come through and close the deal; and our options had expired in the

(Testimony of Harvey J. Martin.)

meantime, and we were discussing *pro* and *con* our chances of delivering in case they did come through, and Mr. West mentioned what Mr. Dwyer said, and I says, "What has he got to do with it?" "Well," he says, "he is a part owner."

Q. Now, didn't he say that—didn't you also get the impression that there was 2,000 acres of land owned by Mr. Dwyer, or Kittie E. Dwyer, his wife, that stood in the name of Kittie E. Dwyer, that was included in this option?

A. No; there was no mention of any segregated portion at all. I simply supposed that he owned an undivided interest in the whole of it.

Q. But that is all that was said to you about his owning an interest, was it, that you have mentioned?

A. Practically, yes.

Q. And you didn't know whether Mr. Dwyer owned, or Kittie E. Dwyer owned, and which of course Mr. Dwyer was interested in because of his being the husband of Kittie E. Dwyer and handling her business—you didn't know anything about that separate 2,000 acres being included in this other deal, did you? A. No.

Q. And that might have been what Mr. West referred to as Mr. Dwyer being interested in the land?

A. I couldn't say what he meant. That is the impression I got, that Dwyer was a part owner.

Q. Now, Mr. Kettenbach nor Mr. Kester never told you that Mr. Dwyer was interested, did they?
[1913—1583] A. Not that I remember of.

Q. And Mr. Dwyer never told you that he had any

(Testimony of Harvey J. Martin.)

interest in it? A. No.

Q. And it was handled as the Kester and Kettenbach land, was it not?

A. That is the way it was put up to me in the first place, yes.

Q. And you simply took an option? Mr. West got an option from Kester and Kettenbach?

A. Yes.

Q. And you and Mr. West was simply trying to sell the land? A. Yes, sir.

Q. To sell it to third parties? A. Yes, sir.

Q. And that was the result of your negotiations, and what brought about these letters and the correspondence between you, was it?

A. Well, the correspondence was principally due to the deal in getting our people to come through with the money, and we were trying to hold them in line.

Q. Now, that plat which was given to you, and which you identified, was the one that was given you by Mr. Kettenbach, was it?

A. This plat that is here?

Q. Yes.

A. No; that is a copy that I made from the one that he made.

Q. You made it from the one that he made?

A. Yes, sir.

Q. Now, you don't know whether that plat includes 2,000 acres of land belonging to Kittie E. Dwyer or not, do you? A. No, I don't.

Q. And you don't know that the land that is in-

(Testimony of Harvey J. Martin.)

cluded in that plat all belongs to Kester and Kettenbach, do you? A. No, I don't.

Q. You haven't checked up the abstracts of title? [1914—1584] A. No, sir.

Q. To see whether it did or not? A. No, sir.

Q. And you don't know whether that includes the Kester and Kettenbach lands, or whether it also includes some lands of their relatives which they could sell, or thought they could sell, with their lands? Was there anything said about that? A. No, sir.

Q. And it might have included that, as far as you know? A. Yes, sir.

Q. What was the aggregate acreage included in your negotiations? A. 20,000, I believe.

Q. 20,000 acres? A. Yes, approximately.

Q. And that included all of the lands that you had any talk about? A. Yes, sir.

Q. Now, wasn't it "at least so many acres, and not to exceed 20,000 acres"?

A. 20,000 acres was placed as the maximum that they would be able to deliver under any conditions.

Mr. GORDON.—The contract sets that out—not less than 15,000 nor more than 20,000.

Mr. TANNAHILL.—Q. Now, didn't they want to leave a leeway there, so that they could put in other lands, and if they couldn't get those other lands that they would not be under obligations to sell it?

A. Well, that wasn't the reason that I understood. Now, of course, I wouldn't say positively what their reasons were, because I don't know; but the impression I got was that they were to be guided largely

(Testimony of Harvey J. Martin.)

by these lands that were in a legal controversy, as to the amount of them that they could deliver. [1915—1585]

Q. But there was no specific statement concerning their reason for that, was there?

A. No. That was naturally understood. He set forth in his description there the amount of lands that were in controversy, and the amount that was clear, and so on.

Q. And the amount clear was something like 15,000 acres?

A. No. At that time I think he only claimed a trifle over 10,000 acres absolutely clear, that he could deliver without question—of any question. Of course, there was some of them that the final receipt had been issued for, but the patent had not, that there was still a question about.

Q. And your deal fell through with, and was never carried through?

A. Yes, sir—that is, to my knowledge.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [1916—1586]

On Wednesday, the 14th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[**Testimony of Rowland A. Lambdin, for Complainant.**]

ROWLAND A. LAMBDIN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of Rowland A. Lambdin.)

Direct Examination.

(By Mr. GORDON.)

Q. Will you please state your full name?

WITNESS.—Why, your Honor the Judge, whoever is presiding over the court here, I am under indictment, and I claim my privilege of not giving any testimony whatever. It might tend to—

Q. Your name is Rowland A. Lambdin, isn't it?

(No answer.)

Q. What are your grounds for not answering, Mr. Lambdin?

A. I told you I was under indictment.

Q. Mr. Lambdin, you are not under an indictment now. A. So I understand I am.

Q. All the indictments against you and all of the other defendants have been dismissed.

A. Even at that, if I should testify in these cases, and if my testimony would conflict with the testimony when it was given before, there is no reason why I might not be indicted again, and I still claim that privilege of not testifying.

Q. Well, are you the Rowland A. Lambdin who testified in these cases before against Kester, Kettenbach and Dwyer?

A. I believe I have stated I don't care to testify.

Q. You can tell your name, can't you? Will that tend to incriminate you? A. It might.

The SPECIAL EXAMINER.—You have been sworn, Mr. Lamblin as a witness, and you are here as a witness, and I don't know what reason you have for not answering. Mr. Gordon says you are

(Testimony of Rowland A. Lambdin.)

not under indictment. [1917—1587] If it is because you are afraid of incriminating yourself in giving your testimony, why that is a statement you can make. There is not any reason why a witness should come before a Court and refuse to answer, without some good reason. He puts himself in a position, if he is reported up to the Judge of this court, where he would probably be arrested for contempt of court, because you are here under process of the court.

WITNESS.—Well, your Honor, I stated my reason. I am under indictment, and I claim my privilege of not testifying. I have heard of no such dismissal as Mr. Gordon says it was dismissed.

The SPECIAL EXAMINER.—Mr. Gordon represents the Government, and he knows whether there is an indictment standing against you or not.

WITNESS.—It stood against me six months ago, and I don't see why it shouldn't stand now, as I have not been under the jurisdiction of the court since that time. If I give testimony in this case conflicting with testimony I had given before, I have no assurance that I will not be reindicted; so I claim my privilege of not testifying.

The SPECIAL EXAMINER.—What do you want to do in the matter, Mr. Gordon?

Mr. GORDON.—I will ask to have the matter certified to Judge Dietrich.

The SPECIAL EXAMINER.—Well, you may prepare a certificate, and I will certify it up.

Mr. GORDON.—Your name is Rowland A. Lambdin, is it?

(Testimony of Rowland A. Lambdin.)

A. Yes, sir.

Q. Where do you reside now, Mr. Lambdin?

A. Spokane, Washington.

Q. Did you ever reside at Lewiston, Idaho?

A. Yes, sir.

Q. And when did you reside there?

A. I came to Lewiston, Idaho, about ten years ago. [1918—1588]

Q. Did you reside at Lewiston on April 25th, 1902, as well as you can remember, Mr. Lambdin?

A. I believe I did.

Q. And how long after that time?

(No answer.)

Q. Oh, approximately?

A. About a year, I should judge.

Q. And you haven't lived at Lewiston since then?

A. Since 1903?

Q. Yes. A. I lived there one year since then.

Q. And when was that?

A. That would be, I believe the year—the fall of 1905 and part of 1906, if I remember rightly.

Q. And do you know the defendants, and did you know them at that time, William F. Kettenbach, George H. Kester and William Dwyer? A. I did.

Q. That was in 1902, when you lived there that time you referred to? A. Yes, sir.

Q. Now, did you take up a claim under the timber and stone act, April 25th, 1902?

(No answer.)

Mr. GORDON.—It is stipulated by and between the parties in open court that the witness Rowland A.

Lambdin is the same person who made timber and stone lands sworn statement April 25th, 1902, and filed the same in the land office at Lewiston, Idaho, on that date, for the purchase of the southwest quarter of section 29, township 42 north, of range 1 west, Boise meridian, and that he made final proof, and that receiver's receipt was issued to him July 22d, 1902, and register's certificate was issued to him for the same land on the same date. It [1919—1589] is further stipulated that the witness Rowland A. Lambdin is the same person who testified on behalf of the United States in the case of the United States vs. William F. Kettenbach, George H. Kester and William Dwyer, in the United States District Court at Moscow, Idaho, in May, 1907. And it is further stipulated that the witness is the same Rowland A. Lambdin who appeared on behalf of the Government in the cases of the United States vs. the same defendants, Kester, Kettenbach and Dwyer, in the United States District Court at Boise, Idaho, in February, 1910, and that he claimed his privilege, that the matter with reference to which he was inquired of might tend to incriminate him, on the ground that he was under indictment.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Rowland A. Lambdin, dated April 25, 1902, and filed in the land office at Lewiston, Idaho, at the same date, the non-mineral affidavit of Rowland A. Lambdin, bearing the same date, the testimony of Rowland A. Lambdin given at the final proof, April 25, 1902, the cross-ex-

amination of Rowland A. Lambdin at the final proof, of the same date, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate dated July 22, 1902, all of said papers being the original files of the United States land office at Lewiston, Idaho, and relating to the entry of the southwest quarter of section 29, in township 42 north, of range 1 west, of Boise meridian. We also offer in evidence a certified copy of the patent issued to Rowland A. Lambdin, and dated January 28, 1904, conveying the same described tract of land. We also offer a certified copy of a deed dated July 22, 1902, made by Rowland A. Lambdin and wife Marion P., conveying to W. F. Kettenbach and George H. Kester, in consideration of \$800.00, the southwest quarter of section 29, in township 42 north, of range 1 west, of Boise meridian; that said deed was properly executed and acknowledged before H. K. Barnett, a Notary Public for Nez Perce County, Idaho, July 22, 1902, and recorded at the request of the Latah County Abstract Company in the office of the Recorder of Latah County, Idaho, June 8, 1903. [1920—1590]

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any thereof, in support of bills No. 388 and 407, upon the ground that the entry of the witness is not involved in those two particular actions, and they are irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence in sup-

port of either of the actions, upon the ground that the same is irrelevant and immaterial.

The Reporter thereupon marked said documents as Exhibits 95, 95A, 95B, 95C, 95D, 95E, 95F, 95G, 95H, 95I, 95J, and 95K,—the nonmineral affidavit offered in evidence not being included in the papers presented for marking.

Mr. GORDON.—Q. Mr. Lambdin, did you have any conversation with Mr. George H. Kester, relative to the entry that you made under the timber and stone act?

WITNESS.—Your Honor, I am under indictment in these cases, and I claim the privilege of not answering any questions that might tend to incriminate myself.

Mr. GORDON.—And I will also state on the record that he is not under indictment for any offense in the Federal Court, and the indictment that he refers to has since the trial at Boise, at which the witness was called to testify on behalf of the Government, and in which he availed himself of his privilege, has been dismissed.

The SPECIAL EXAMINER.—Do you insist upon his answering the question, Mr. Gordon?

Mr. GORDON.—Yes.

WITNESS.—Your Honor, notwithstanding the same, if this indictment has been dismissed, I have no assurance whatever that if my testimony might conflict with the testimony I gave before, in that case I am not sure but what I might be reindicted.

The SPECIAL EXAMINER.—And you still

claim your privilege? [1921—1591]

WITNESS.—I still claim my privilege. I state that I have been away from Boise since the indictment was returned there, and I have been out of the jurisdiction ever since, and as far as I know it is still in force.

Mr. GORDON.—Q. I will ask you, Mr. Lambdin, whether or not at the trial you testified on behalf of the Government at Moscow, in the spring of 1907, the questions which I shall read to you, and the answers which I shall also read, the questions being asked, and the answers made by you. I read from page 632 of the record of the Circuit Court of Appeals, No. 1605, the case of William F. Kettenbach, George H. Kester and William Dwyer vs. the United States, referred to in the stipulation made by and between counsel for the respective parties at the beginning of the taking of the testimony in these said cases:

“Q. Where do you reside, Mr. Lambdin?

“A. Potlatch, Idaho. I am in the employ of the Potlatch Mercantile Company, have been there since the 10th of January, about two years at one time, and one year at another time, I resided at Lewiston, Idaho; I was there in 1902. I am acquainted with the defendant W. F. Kettenbach, and have known him for about five or six years. I don't know as I was ever introduced to him; I have often spoken to him. I have had some business transactions with Mr. Kettenbach through which we became acquainted. I have known George H. Kester since about the

(Testimony of Rowland A. Lambdin.)

spring of 1902. I got acquainted with him in the Lewiston National Bank. I had dealings with him so that we became acquainted. I have known the defendant Dwyer about the same length of time at Lewiston, Idaho."

I will ask you, Mr. Lambdin, if you remember those questions being asked you and those questions answered by you at the trial I have referred to?

A. I still claim my privilege.

Q. And decline to answer? [1922—1592]

A. And decline to answer, yes, sir.

Q. "Q. Did you at any time file upon a timber claim under what is known as the stone and timber law? A. I did."

Do you remember that question being asked you, and that answer made by you?

A. I decline to answer, for the same reason.

Q. I shall read the following questions, and ask you whether you made the replies that I shall also read, at the time that you appeared on behalf of the Government, heretofore referred to:

"Q. Where were you residing at that time?

"A. Lewiston, Idaho.

"Q. State in your own way the circumstances leading up to your filing on this timber claim and then go ahead and relate the incident in your own way.

"A. Yes, sir.

"Q. You recognize this paper? A. Yes, sir.

"Q. Is that the paper you filed in the land office at Lewiston, the time you applied to purchase these timber lands? A. Yes, sir.

(Testimony of Rowland A. Lambdin.)

“Q. Now, you may go ahead and state the circumstances leading up to this, how you came to be attracted to the subject.”

There was an objection there, and then the question was continued:

“Q. (Continued.) Did any person come to you and mention the subject of your taking the timber claim? A. Yes, sir.

“Q. Who was that person?

“A. Samuel C. Hutchings.

“Q. Did he tell you the name of the person from whom he came? A. Yes, sir.

“Q. Who was it? [1923—1593]

“A. George H. Kester.”

Do you remember those questions being asked you, and those answers made by you, at the time referred to? A. I still decline to answer.

Q. “Q. Did he relate to you the conversation he had had with Kester in relation to it, and what had been said to him by Kester?

“A. He told me I could get a claim through Mr. Kester.

“Q. Now, what did you do after Hutchings told you about this?

“A. I went to the bank and saw Mr. Kester.

“Q. All right. Now, go ahead and state what occurred.

“A. I went around and introduced myself to Mr. Kester and told him Mr. Hutchings had sent me around there and I understood he wanted me to take up this timber claim, and I would get \$100.00 for

(Testimony of Rowland A. Lambdin.)

taking it up, he to pay all expenses of the transaction. We came to an agreement, and he told me that Dwyer was going up in a few days and he would notify me when he was going and to meet him at the train and go up with him into the timber.

“Q. You came, you say, to an agreement; what was that agreement?

“A. The agreement was I should go out and take up a stone and timber claim and they would pay all the expenses, and I was to receive \$100.00 when I made my final proof and turned over the deed to them.

“Q. Was anything said about the money to make the final proof on the land?

“A. They were to furnish all the expenses in the transaction.”

Mr. Lambdin, were those questions asked you and those answers made by you, at the time I referred to?

A. I still decline to answer.

Q. I continue to read the testimony of Rowland A. Lambdin, from the record above mentioned, and ask you if this question was asked you:

“Q. Including the money to pay for the land?

“A. Including everything. [1924—1594]

“Q. Well, now, go right ahead and relate it.

“A. Well, I think it was about ten days later I was notified; I don't remember just who notified me. Anyway I was notified to go up with Dwyer the following morning. He would be going up to meet him at the train. I think it left at 7:30 in the morning. I went up to Vollmer, what is now called Troy.

(Testimony of Rowland A. Lambdin.)

There we procured saddle-horses, Mr. Dwyer got two, and from there we got on into the timber, I should think about twenty miles.

“Mr. RUICK.—You speak pretty rapidly for the reporters.

“Mr. TANNAHILL.—Go right ahead, they will get it.

“Q. Talk to the jury, turn to the jury and go ahead in your own way.

“A. We got up there the following day; we stayed overnight at a place, we stayed there one night; I had a kind of an accident, and I had to return to Vollmer and back again, proceeding on the next day, and got there along in the afternoon about three o'clock, between three and four, and put up at a party's house, I don't remember the name. The next morning we went up to the timber. I went over the claim I was to file on, I supposed I did, looked at the corners on the stake. I also went over some other timber at that time, and the next day after that I returned to Vollmer, and Mr. Dwyer stayed up in the timber. He rode back probably about fifteen miles with me, and he left me there, and I came back to Lewiston that afternoon and got there about 3:30, and went up to the land office and was directed to go to Mr. Mullen, in Anderson's office I believe at the time, I forget which one of them made out my papers, and from there I went in and filed on the timber claim.

“Q. Where did you get the money to file or pay the filing fee? A. Kester.

“Q. Did you pay Mullen anything?

(Testimony of Rowland A. Lambdin.)

“A. Yes, sir.

“Q. Or whoever made out the papers?

“A. I paid for filing the papers, and also for recording them; paid Mr. West. [1925—1595]

“Q. How much did you get for that?

“A. I don’t remember how much; just enough to cover it. I gave him the exact amount.

“Q. Now, Mr. Lambdin, before you filed these papers in the land office, did you have any conversation with any person, any of the defendants, relative to the matters in the land office, and the profits which you would be apt to make?

“A. Mr. Dwyer and I had talked the matter over quite a little up in the timber; I didn’t know what was expected of me so I had to make inquiries to find out.

“Q. Was the matter discussed between you and Dwyer at all relative to what you would have to answer in the land office and how you would have to answer in the land office? A. Yes, sir.”

I will ask you, Mr. Lambdin, whether those questions that I have read, and the answers which I have read in reply to them—whether you remember that they were made by you—whether you remember the questions being asked you, and the answers being made by you, when you testified on behalf of the Government at the trial at Moscow in 1907?

A. I still decline to answer.

Q. I continue to read from the record referred to:

“Q. Was the matter discussed between you and Dwyer at all relative to what you would have to an-

(Testimony of Rowland A. Lambdin.)

swer in the land office and how you would have to answer in the land office? A. Yes, sir.

“Q. I will show you the testimony given by you upon your final proof, and will call your attention to the sworn application filed by you on the 25th of April, 1902, and the statements contained therein to the effect: I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons [1926—1596] whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,” also these questions particularly in your final proof: “Have you sold or transferred your claim to the lands since making your sworn statement, or have you directly or indirectly”—this is the part to which I call your attention particularly—“directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?” And “Do you make this entry in good faith for the appropriation of the land exclusively to your own use and benefit, and not for the use or benefit of any other person?” And this other question “Nor has any other person than yourself, or has any firm, corporation or association any interest in the entry you

(Testimony of Rowland A. Lambdin.)

are now making, or in the land or in the timber thereon"; also these other particular questions in your cross-examination, "Did you pay out of your own individual funds all the expenses in connection with making the filing, and do you expect to pay for the land with your own money?" That was question 16 of the cross-examination. Question 17: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" to which you answered: "I borrowed \$100.00 of it on my personal note, and no way involved this land to secure the loan. Most of it has not yet"—etc. Now, I will ask you, Mr. Lambdin, whether or not these subjects embodied in these questions were talked over between you and Dwyer or either of the defendants at any time before you made your filing or your final proof?

"A. Most of them were talked over between Mr. Dwyer and myself.

"Q. Now you have stated about your filing and having papers made out and your filing; now go ahead and state what else occurred in relation to this subject.

"A. You mean in regard to filing or final proof?

"Q. Yes, anything to any feature of it. [1927—1597]

"A. I think it was lacking two or three days of three months when I was notified through the land office of the day I was to prove up would arrive, and in the meantime Mr. Dwyer had sent to have my witnesses down for me. I forget his name, one of the

(Testimony of Rowland A. Lambdin.)

men we stopped with the night we was up in the timber. He lived close there and he came down on the morning train on the day to prove up. I think about ten o'clock in the morning. Before I went to prove up I went into the Directors' room of the bank, and Mr. Kester gave me the money to prove up with, and I went upstairs.

"Q. Did you execute any papers there at the time he gave you the money? A. No, sir.

"Q. Give him any note or other security?

"A. No, sir.

"Q. Did he ask you for any?

"A. Not to my knowledge. I also got \$20.00 to pay the witness with and I went upstairs and made my final proof and paid the money over and got a deed and came down to the bank, and Mr. Kester and Mr. Dwyer, I think, and myself went across to Mr. H. K. Barnett's office, and there was a deed made out and I signed it, and Mr. Barnett and myself got into a hack and went up to the house and my wife signed the deed, and we came back down town.

"Q. You spoke of getting \$20.00 from Mr. Kester to pay a witness with. What witness do you refer to there?

"A. The gentleman that came down to witness my final proof.

"Q. Did you know that this witness was coming and had been secured for the purpose?

"A. Yes, sir.

"Q. Did you have any conversation with either of the defendants about it before he came there, before

(Testimony of Rowland A. Lambdin.)

he got there?

“A. Yes, Mr. Dwyer had told me I would have to have four witnesses [1923—1593] and he gave me the four, had the four names that I got from him, and he seen to this witness coming down so that I had nothing to do with it.

“Q. What conversation, if any, did you have with him relative to the witnesses failing to appear or anything of that sort?

“A. Well, not much if any. The morning that I was to prove up, I went up and saw Mr. West, I didn't know maybe he might not get down, and I went up to see Mr. West, to see if I could get a stay of proceedings for two or three days if the witness did not get down. I found that I could, but the witness got down on the morning train, and I didn't need it.

“Q. I want to know who suggested it?

“A. I forget who suggested it, but it was suggested to me by either Mr. Dwyer or Mr. Kester.

“Q. You say Mr. Kester gave you this \$20.00 to go and pay the witness? A. Yes, sir.

“Q. Did he have any conversation with you at the time he handed you this money?

“A. Before I was handed the money I had to find out what the witness wanted.

“Q. I want you to tell what Mr. Kester said, what, if anything, he said to you about it at the time he gave you this money?

“A. When he gave me the money he told me so much of it would be to pay for the filing and filing

(Testimony of Rowland A. Lambdin.)

proof, and pay for the land, and \$20.00 for the witness, but before I got the \$20.00 I found out what the witness was going to charge and reported it to Mr. Kester.

“Q. Did you discuss the matter with either of the defendants relative to what you would say as to where the money had come from, or anything of that sort?

“A. We had some talk on the matter, but I don't remember just **[1929—1599]** what was said. I know I was supposed to have the money myself, or that it would come up anyway where I got the money from.

“Q. Do you remember with whom you had this talk?

“A. I had almost all my talk on that part of it with Mr. Dwyer.

“Q. When you came down from the land office with them, you stated you got your final receipt. Did you get a final receipt when you made your final proof?

“A. I got a receipt; yes, sir.

“Q. From the land office? A. Yes, sir.

“Q. Where did you take it to?

“A. Took it right into the bank and gave it to Mr. Kester.

“Q. What, if anything, did Kester say to you when you came down into the bank?

“A. I think he just asked me if I got any receipt, and I told him yes, and turned it over to him, and he asked me to come over to Mr. Barnett's office and went with me there, and there got a deed and took

(Testimony of Rowland A. Lambdin.)

it along, or else Mr. Barnett had it already. Anyway it was all ready for me to sign.

“Q. This was the same day you made your final proof? A. Yes, sir.

“Q. Who did this deed run to?

“A. I didn’t know at the time who it did run to; I never looked at it.

“Q. Did you ever learn later who it run to?

“A. Yes, sir.

“Q. Who to?

“A. W. F. Kettenbach and George H. Kester.

“Q. Have you ever paid any location fee at all?

“A. No, sir.

“Q. Never agreed to pay any attorney fee?

“A. No, sir.

“Q. Were you ever asked to pay any? [1930—1600] A. No, sir.

“Q. Any talk about a location fee?

“A. None whatever that I remember of.

“Q. When, if at all, did you get this \$100.00?

“A. Between the time of filing on the claim and proving up on it.

“Q. How did you get it?

“A. Went to the bank and got it in dribbles of \$10.00 or \$15.00, one time \$35.00.

“Q. From whom? A. From Kester.

“Q. State the circumstances of those different payments, Mr. Lambdin?

“A. Well, I think one time I got \$10.00 or \$25.00. No, it was \$20.00, I gave my note I guess, and then a man by the name of Schroeder, I think, signed a note,—

(Testimony of Rowland A. Lambdin.)

“Q. Was there an understanding in regard to that note, at the time it was executed as to its payment?

“A. Why, Mr. Schroeder was given to understand he would never be called upon to pay it.

“Q. By whom? A. By myself and Mr. Kester.

“Q. What were the reasons given there at the time?

“A. Why, I think it was just simply that the note would be taken care of and was simply a matter of form, that somebody else would have to be on the note with me.

“Q. Well, now, what other payments did you receive that you recall?

“A. I drew a check once I think for \$35.00 and it was cashed.

“Q. Did you have any money at the bank at the time? A. No, sir.

“Q. Was the check paid or honored?

“A. Yes, sir. [1931—1601]

“Q. Well, how much of this money had been paid at the time you made final proof?

“A. I think the whole thing was paid at the time I made final proof.

“Q. You think there was nothing coming to you at the time?

“A. I don't remember of anything coming to me when I proved up.

“Q. Was there anything paid to you at that time when you executed the deed?

“A. No, sir, I don't think so.

“Q. How much then did you ever receive?

(Testimony of Rowland A. Lambdin.)

“A. Received \$100.00.”

Do you remember those questions being asked you at the trial at Moscow, to which I have heretofore referred, and do you remember those answers which I have read being made by you?

A. I still refuse to answer.

Q. Continuing to read from the same record, I will ask you whether these questions were asked you, and whether the answers which I shall read were made by you:

“Q. Mr. Lambdin, at the time you first went down to the bank to see Mr. Kester about filing on the timber claim, what did Kester say to you about the proposition of filing on a timber claim?

“A. I was given to understand by Mr. Kester if I went up and took a timber claim that the expenses would be all paid, and I would receive \$100.00 when I made final proof.

“Q. What, if anything, was said about—was anything further said about the scarcity or plentitude of timber claims at that time, if anything of that sort?

“A. Well, I was given to understand that timber was being taken up.

“Q. Not what you were given to understand, but what Kester told you?

“A. He said the timber was being taken up very rapidly and would [1932—1602] soon be all gone and if I did not take up a claim now, I would not be able to get one if I waited.”

Do you remember those questions being asked you, and those answers made by you, at the trial at Mos-

(Testimony of Rowland A. Lambdin.)

cow that I have referred to?

A. I still refuse to answer.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Lambdin, I will ask you if on the occasion referred to by Mr. Gordon, the following questions were asked you by myself, on cross-examination, and if you made the answers which I shall read, and I will read from the same record that Mr. Gordon read from, commencing on page 646 of that record:

“Q. You say you were given to understand if you went up and took a timber claim that the money would be furnished you to make final proof and save expenses? A. Yes, sir.

“Q. That was your understanding?

“A. That was my understanding.

“Q. And that if you did go up and take the claim and make final proof you would be able to make \$100.00 out of it? A. Yes, sir.

“Q. That was your understanding of it?

“A. Yes, sir.

“Q. And you did go up and take a timber claim?

“A. I did.

“Q. And you went up because they were getting scarce, and you thought you would not have very many opportunities to use your timber right?

“A. No, sir, not so much that as I wanted the \$100.00; I needed it.

“Q. You needed the \$100.00?

“A. Yes, sir. [1933—1603]

“Q. And you felt you would be able to make \$100.00 if you took up a timber claim?

(Testimony of Rowland A. Lambdin.)

“A. I had Mr. Kester’s word for it and I took that.

“Q. Where did you say you had been working last here recently?

“A. Potlatch Mercantile Company.

“Q. How long have you been working there?

“A. Since the 10th of January of this year.

“Q. Where was you before that?

“A. In Spokane.

“Q. How long have you been there?

“A. A year ago last November I went there.

“Q. Where were you in April, 1905?

“A. I believe I was in Lewiston.

“Q. Were you in Spokane in April, 1905?

“A. Well, I was in Lewiston just a year before I went to Spokane; I was in Spokane a year.

“Q. What were you doing in Spokane?

“A. I was in both Spokane and Lewiston, but not in April; I think I was in Lewiston in April. I think I left in 1905, in the fall.

“Q. You think you left Spokane?

“A. No, Lewiston. I think I left there and went to Spokane in the fall of 1905.

“Q. Were you in Spokane any of the time during the time you were in Lewiston? Did you go back and forth to Spokane? A. I don’t think I did.

“Q. Now, were you at Lewiston all the time?

“A. The last time I was there for about a year; I think it was a year.

“Q. When did you first come to Lewiston?

“A. I think I came there in the fall of 1900.

“Q. And how long were you there at that time?

(Testimony of Rowland A. Lambdin.)

[1934—1604] A. About two years.

“Q. About two years? You left then in the fall of 1902? A. About that, yes, sir.

“Q. Then where did you go?

“A. I went to Spokane and from Spokane to Seattle.

“Q. When did you go to Spokane?

“A. I went to Spokane, I believe, in the fall of 1902.

“Q. When did you leave Spokane to go to Seattle?

“A. I was in Spokane a few days, about ten days or two weeks probably.

“Q. Then, where did you go?

“A. I went right to Seattle.

“Q. Where did you go when you left Seattle? How long did you stay in Seattle?

“A. I stayed in Seattle about a year and a half, along in July, I think, or the first of August.

“Q. Then, where did you go?

“A. Then, I came down, came down to Spokane and stayed there until about the 20th of November.

“Q. Of the same year, 1904?

“A. Of the same year.

“Q. Then, where did you go?

“A. Came to Lewiston and stayed one year.

“Q. That would be until the 20th of November, 1905? A. That would be the fall of 1905.

“Q. I will ask you, Mr. Lambdin, if you recognize that handwriting? (Showing witness paper.)

“A. That is my writing.

“Q. That is your writing? A. Yes, sir.

(Testimony of Rowland A. Lambdin.)

“Q. You addressed that envelope, did you?

“A. I believe I did. [1935—1605]

“Q. I will ask you to look at this letter (showing witness paper) and state whether or not that is in your handwriting.

“A. That is my handwriting.

“Q. You mailed that to George H. Kester?

“A. I did, sir.

“Mr. TANNAHILL.—We ask that these be identified and each marked for identification.

“(Envelope marked Defendants’ Exhibit ‘G’ for Identification. Letter marked Exhibit ‘H’ for Identification.)

“Q. Look at this letter I now hand you and state whether or not that is your signature to the letter.

“A. That is my signature, yes, sir.

“Q. You mailed that to Mr. Kettenbach, did you not?

“A. Mr. Kester, I think, I don’t remember—no, Mr. Kettenbach.

“Mr. TANNAHILL.—We ask that this be marked Defendants’ Exhibit ‘I’ for Identification.

“(Letter so marked.)

“Q. I will ask you, Mr. Lambdin, to look at this copy of a complaint and state whether or not that is the paper that you refer to in this letter, marked Defendants’ Exhibit ‘I’ for Identification.

“A. Yes, sir, that is the same one.

“Mr. TANNAHILL.—We ask that this copy of a complaint be marked Defendants’ Exhibit ‘J’ for Identification.

“(The same is so marked.)

(Testimony of Rowland A. Lambdin.)

“Q. Mr. Lambdin, you wrote Mr. Kettenbach a letter a few days before you sent this one in which you enclosed a copy of the complaint, did you not?

“A. You mean a letter previous to this one you have now?

“Q. The one with which you enclosed the copy of the complaint?

“A. You mean a letter previous to this one you have now?

“Q. Yes, you wrote a letter previous to this one, did you not?

“A. Not that I remember of. [1936—1606]

“Mr. TANNAHILL.—I offer these documents in evidence, being the envelope and letter referred to as Defendants’ Exhibit ‘G’ and ‘H,’ already identified; the envelope bears the postmark, Spokane, Washington, April 5th, 6:30 P. M., 1905, and is addressed to George H. Kester, Lewiston, Idaho.

“And the same was thereupon marked respectively Defendants’ Exhibit ‘G’ and ‘H,’ copies of which appear elsewhere in this transcript.

“Mr. TANNAHILL.—We also offer in evidence Defendants’ Exhibit ‘I’ and ‘J’ for Identification, which said documents were received in evidence and marked Defendants’ Exhibits ‘I’ and ‘J,’ respectively, copies of which appear elsewhere in this transcript.

“Q. Mr. Lambdin, you stated that you returned to Troy after you and Mr. Dwyer left Troy, or Vollmer as you call it? A. Yes, sir; I returned to Troy.

“Q. What did you return for?

(Testimony of Rowland A. Lambdin.)

“A. To take the train to Lewiston.

“Q. Did you have any other mission?

“A. Did I have any other mission?

“Q. Yes; after you went away from Troy you went back for something, did you not?

“A. Because I lost my pocketbook.

“Q. Did you have any money in it?

“A. Yes, sir.

“Q. How much money did you have?

“A. \$100.00.

“Q. Did you not have \$200.00 in it?

“A. I don't know. I had enough money in it so that I was anxious to get back and find it; I don't think that I had more than a hundred.

“Q. Did you not tell Mr. Dwyer on this trip, yourself and Mr. Dwyer being present, that you had money to pay him his location fee, or words in substance and to that effect? [1937—1607]

“A. No, sir.

“Q. You didn't tell him that? You never had any conversation with Mr. Dwyer regarding the location fee? A. Not that I remember of.

“Q. Now, Mr. Lambdin, you state in this letter that you wrote Mr. Kester a letter and received no reply from him. What letter did you refer to?

“A. That is the letter I wrote from Spokane, is it?

“Q. Yes. (Reading:) ‘I wrote you a letter Saturday evening telling you of conditions and that I needed \$75 by Friday. I received a letter from my brother to-night, stating that he had not seen you.’ You wrote that sort of a letter?

(Testimony of Rowland A. Lambdin.)

“A. Yes, sir, I did, prior to that one.”

Do you remember whether those questions were asked you, and whether you made those answers, Mr. Lambdin? A. I decline to answer.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lambdin, at the time that I have before referred to, do you remember whether or not the following questions were asked you, and whether or not you made the following answers, on redirect examination by Mr. Ruick, and I will read from the record that I read from before, commencing on page 652:

“Q. What money was this that was in your purse which you lost on that trip?

“A. Money given me by Mr. Schroeder for another mission.

“Q. Was the money yours, any part of it?

“A. No part of it was mine only for use on this certain mission.

“Q. What was your financial condition at that time? A. I was broke and out of work.

“Q. Who is Mr. Schroeder?

“A. He is the gentleman I had been working for but his laundry [1938—1608] burned and threwed me out of work.

“Q. What threw you out of work?

“A. The burning of his laundry.”

Were those questions asked you, and did you make those answers, at the time and upon the occasion that I have referred to?

A. I decline to answer.

(Testimony of Rowland A. Lambdin.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Lambdin, I will ask you whether or not the following questions were asked you, and if you made the following answers, upon the occasion which we have before referred to, and I read from page 652 of the volume which I have before read from:

“Q. You have been indicted, have you not?

“A. Have I been indicted?

“Q. Yes? A. Not that I know of.

“Q. You don’t know whether you have been indicted or not?

“A. I had never heard of it, except it was in the paper, the ‘Lewiston Tribune,’ that, of course, is just Lewiston newspaper talk.

“Q. You have never been arrested?

“A. Have I ever been arrested?

“The COURT.—That is, upon the indictment here?

“A. No, sir.

“Q. With whom did you talk about your evidence, Mr. Lambdin? Who was the first Government official you talked with regarding any transactions with Mr. Kester?

“A. I talked with two parties at once.

“Q. Who?

“A. Mr. Goodwin and Mr. O’Fallon.

“Q. Where did you talk with them?

“A. In my house and at the Bollinger Hotel.

“Q. Do you remember about when that was?

[1939—1609]

(Testimony of Rowland A. Lambdin.)

"A. No, it was prior to the grand jury at Boise; I think it was in the spring or early summer of 1905.

"Q. Did you give them a statement at the time?

"A. I did.

"Q. And have you seen that statement since?

"A. I have.

"Q. When did you see it?

"A. I saw it last night.

"Q. You read it over last night, did you?

"A. Yes, sir; I read it over.

"Q. And when did you see it prior to last night and since you gave it to the officers?

"A. I could not answer that question positively; I might have seen it down at Boise, but I don't remember seeing it.

"Q. You appeared before the grand jury at Boise? A. I did.

"Q. And had a talk with Mr. Ruick, Mr. Goodwin and Mr. O'Fallon?

"A. I believe we had some conversation, but what it amounted to I don't remember.

"Q. And then, you went over your statement last night?

"A. I read my statement over last night."

Were those questions asked you, and did you make those answers, at the time and place I have referred to? A. I decline to answer.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lambdin, I will ask you whether or not you were asked the following questions, and whether you

(Testimony of Rowland A. Lambdin.)

made the answers which I shall read to you, at the trial to which I have heretofore called your attention, on redirect examination by Mr. Ruick. I read from page 654 of the record which I read from before:

“Q. When you testified in Boise, and when you were before the [1940—1960] grand jury in Boise, do you remember what month that was?

“A. I think it was in June; I know it was in the summer, anyway.

“Q. Wasn't it in July?

“A. It possibly was, it was along in the warm weather, I know, June or July.

“Q. Was it before or after you had made this written statement to Mr. Goodwin and Mr. O'Fallon?

“A. It was after.

“Q. When had you made that statement to Mr. Goodwin and Mr. O'Fallon?

“A. Sometime in May, I believe.

“Q. Of what year? A. 1905, I think.

“Q. Well, was it before you went down to Boise?

“A. It was before I went to Boise; yes, sir.

“Q. Is that your signature to that document?

“A. Yes, sir.

“Q. Is that the affidavit that you made the sworn statement that you made in the presence of Mr. Goodwin and Mr. O'Fallon in relation to the facts of this particular case? A. Yes, it is.

“Q. Was it made on the day on which it bears date as you recollect it? A. About the time of it.

“Q. Mr. Lambdin, this skeleton complaint, this unsigned complaint, which you sent to Mr. Kester—

(Testimony of Rowland A. Lambdin.)

that you sent to Mr. Kettenbach, accompanied by the letter addressed to him, when was that time relative to the time that you made this statement to Mr. Goodwin and Mr. O'Fallon, do you remember?

"A. Why, about a week I should judge prior to my statement to Mr. Goodwin and Mr. O'Fallon."

Do you remember those questions being asked you, and those answers [1941—1611] being made by you? A. I decline to answer.

Q. Now, I will ask you if you remember the following questions being asked you in the case to which I have referred, upon your being recalled as a witness in behalf of the Government, and whether or not you made the answers which I shall read to you, and I will read from the same record that I have read before, commencing on page 656:

"Q. Now, Mr. Lambdin, you may explain this transaction in these letters and this blank complaint to which your attention has been called.

"A. In the first place, my wife was taken very seriously ill and had to be taken up to Spokane to be operated upon and we didn't know whether she would live or whether she would die. I went to Dr. Phillips and to the First National Bank, and saw Mr. Kester and Mr. Kettenbach, and told them what I wanted the money for, and that I had to have it as she had to be taken very soon, and explained the situation and had the doctor there with me, so he would know and I wanted to borrow the money so I could take her up and they flatly refused me; so later I went to Mr. Frank Kettenbach of the Idaho

(Testimony of Rowland A. Lambdin.)

Trust Company, so he gave me his personal check for \$300.00 after I stated the case to him.

“Q. W. F. Kettenbach? Did W. F. Kettenbach, the defendant, later refer to the transaction between you and Frank Kettenbach? A. He did.

“Q. Go ahead and state the conversation between you and Frank Kettenbach.

“A. I told Frank Kettenbach the circumstances, the reason I wanted the money, and he told me to come back at 7 o'clock that evening.

“Q. Relate the entire conversation you had with him. We want it all.

“A. I told Mr. Frank Kettenbach my wife was very seriously ill; that I had been up to the other bank and had seen Mr. W. F. Kettenbach about it, and Mr. Kester and tried to make a loan, and they had refused [1942—1612] it, and that she had to go to the hospital and be operated on and she would have to go at once, for the reason that the surgeon who waited on her was going east, and she had to be leaving that night to be operated on next day. Mr. Kettenbach said—

“Q. State what you told him. State the conversation in full.

“The COURT.—State what you said.

“A. I came out at the time flatfooted and told Frank Kettenbach that if I didn't get the money, Kester and Kettenbach would have cause to regret it.

“Q. Now, go ahead and state the facts, the conversation.

(Testimony of Rowland A. Lambdin.)

“A. And Mr. Kettenbach said he would take the matter up with Mr. W. F. Kettenbach, his brother, or anyway a relation, and have me to call at the bank at seven o'clock that evening. He also told me, he asked me who I would get to sign the note with me, and I said my brothers. He also wanted my brother's wife on the note, and I objected to bringing her in the deal and he said it wasn't necessary. I got a party by the name of Ralph Chapman in place of her, in place of my brother's wife; I got the note signed up and met him at 7 o'clock, or near 7:30 that evening, and he gave me his personal check for \$300.00, and took the note as security.

“Q. What talk did you have with either of the defendants concerning that note later?

“A. Later I went to Spokane anyway, and of course \$300.00 was very little over the operating expenses; in fact, the operating expenses were \$275.00, and I had to have a trained nurse and other incidental expenses and I wrote Mr. Kettenbach this letter.

“Q. Mr. Kettenbach or Mr. Kester?

“A. Mr. Kester. I stated the reasons and told him—told him to see my brother and he would sign a note for \$75.00, and when I returned, which would be on the Sunday following, Sunday I would sign the note, and for him to send me the money at once.

“Q. Pardon me, Mr. Lambdin; I was misled by your statement. You are now referring to the letter that is not here? [1943—1613]

“A. I am referring to another letter not here.

(Testimony of Rowland A. Lambdin.)

The first letter they asked me about.

“Q. That was written to him?

“A. The 17th of August, the same as the second one that was wrote to Mr. Kester.

“The COURT.—The letter introduced in evidence was written to Mr. Kester.

“Mr. RUICK.—Yes, go ahead.

“A. Mr. Kester didn't answer and I telephoned to my brother. My brother said he hadn't seen him, so I wrote this next letter, stating, as has been read before the Court, that I must have this money. He already knew from the previous letter just the situation I was in. I was up there broke, with my wife in the hospital and nothing to do, and I must have the money or stay there.

“Q. Did you see either one of the defendants later concerning this \$300.00 note at the Idaho Trust Company?

“A. Afterwards I was in Mr. Gaut's barber-shop in Lewiston, and Mr. Kettenbach came in and he took a chair in the rear and I went over and sat down beside him, and brought up or mentioned the \$300.00 note, but he gave me to understand it was through his doings that I received the money from Frank Kettenbach, and also that he expected that it would be taken care of.

“Q. What did he say? You say ‘the understanding,’ we want the statements as near as you can give them.

“A. I know money matters were brought up. I don't know exactly the circumstances, but anyway

(Testimony of Rowland A. Lambdin.)

I believe I asked him for another loan, \$25.00 I believe it was, and he told me that he had already secured me this \$300.00 and that he had done all he needed to, and also in the conversation I understood that he intended to take care of it. Later we had another conversation after I was notified by F. W. Kettenbach the note was due and ought to be paid at once, or he would serve notice on [1944—1614] the other signers, or something to that effect, and I went to him again about it and he denied saying anything about it, and plainly told me to attend to my own business and he would attend to his, or to that effect, that he didn't care anything about me, or how I came out.

“Q. In regard to this skeleton complaint, Mr. Lambdin?

“A. The skeleton complaint I got up and sent to Mr. Kettenbach, simply as a matter of form, to see whether he would send this money or not. I found out in the meantime I had only got \$100.00 whereas the warranty deed called for \$800.00 for the claim, and that left a difference of \$700.00 for the deed or claim, which I have never received; I got up a skeleton complaint and sent it to Mr. Kettenbach to see what he would do about it. He never said anything more to me, and I never said anything to him. It ended right there excepting I saw him, I believe, the next day and found out that he didn't intend to do anything. I dropped the matter and he had—

“Q. What did you say to him?

“A. I could not recall our conversation. it was

(Testimony of Rowland A. Lambdin.)

simply—he mentioned something about he had me for blackmail, and he didn't need to bother any more about me. He told me, I think, I. N. Smith had it in his hands.

“Q. State what he said.

“A. He told me the paper I sent him was in his attorney's hands, I. N. Smith's hands, and he guessed he had me where they wanted me or something to that effect. I never signed it or recorded it, or anything of that kind, and I didn't think they did—and I dropped the matter and that has been the end of it.

“Q. You had the notes to pay and you paid them?

“A. I had the notes to pay; I don't know whether they are all paid or not. I have not been notified of any back payments due on them anyway.

“Q. Did you have any transactions with either of these defendants after the grand jury met down there in Boise in relation to this subject, [1945—1615] to these matters at all?

“A. I don't believe I did.”

Do you remember those questions being asked you, and those answers being made by you?

A. I decline to answer.

Q. I show you what purports to be an affidavit signed by R. A. Lambdin, dated May 27th, 1905, and sworn to on that date before Francis M. Goodwin, Special Agent of the General Land Office, attested by S. F. O'Fallon, and ask you, Mr. Lambdin, if you signed that paper? A. I refuse to answer.

Mr. GORDON.—I will ask to have that question

(Testimony of Rowland A. Lambdin.)

certified also, and I will ask to have that affidavit marked for identification.

Said affidavit was thereupon marked by the Reporter as Exhibit 96 for Identification.

Mr. GORDON.—Q. Mr. Lambdin, I will ask you if you remember the following questions which I shall read being asked you, and the answers which I shall also read being made by you in response to those questions, when you appeared as a witness on behalf of the Government at the trial of the cases of the United States vs. Kester, Kettenbach and Dwyer, at Boise, in February last:

“Q. What is your full name, Mr. Lambdin?

“A. Rowland A. Lambdin.

“Q. Where do you reside? A. Butte, Montana.

“Q. How long have you resided in Butte, Montana? A. About three years.

“Q. Where did you reside prior to that time?

“A. Spokane, Washington, for a short time.

“Q. When did you reside in Spokane, in what year? A. 1907, the spring of 1907, I think.

“Q. Until 1907? [1946—1616]

“A. I was just there a short time, for about three weeks.

“Q. Did you ever live in Lewiston?

“A. I did; I lived there about three and a half years once at one time and a year another time.

“Q. When was this that you lived in Lewiston?

“A. I think I came to Lewiston ten years ago this fall.

“Q. And remained there until 1907?

(Testimony of Rowland A. Lambdin.)

“A. No, I remained there three and a half years, and then went to Seattle, and then came back to Lewiston and stayed there a year after that.

“Q. Tell me the years you stayed at Lewiston.

“A. I think I came to Lewiston in the fall of about '99, and I was there for three years and a half.

“Q. From '99 until 1903, some time?

“A. Something like that.

“Q. And then you went away and returned again?

“A. I did.

“Q. How long were you away?

“A. I was away about two years and a half, maybe three.

“Q. Do you know the defendant William Dwyer?

“A. I do.

“Q. Do you know Mr. Kester? A. I do.

“Q. And Mr. Kettenbach? A. Yes, sir.

“Q. How long have you known each of them?

“A. Well, pretty nearly—

“Q. Approximately? A. About nine years.

“Q. What was your occupation in 1902 and 1903?

“A. I think I was marker and assorter for a laundry in Lewiston at that time. [1947—1917]

“Q. Were you ever employed by the Potlatch Lumber Company? A. I was.

“Q. When was that?

“A. I was employed by them at the time the case came up at Moscow; I don't remember the year.

“Q. Did you ever talk with any of the defendants, or all of them, relative to taking up a timber claim?

“A. I would like to be relieved of answering ques-

(Testimony of Rowland A. Lambdin.)

tions about any matter that might tend to incriminate me,—I believe I am under indictment.

“The COURT.—Is that true, Mr. Gordon?

“Mr. GORDON.—I don’t know but what it is, if your Honor please. I have heard that the gentleman is indicted; I don’t know it, but I assume that he is.

“The COURT.—Apparently he would have the right to claim the privilege if that is the case. I suppose this relates directly to a matter involved in the indictment, if he was indicted?

“Mr. GORDON.—Yes, sir.

“The COURT.—Do you desire time to make examination of the record, or do you assume that the witness’s statement is correct?

“Mr. GORDON.—I assume that his statement is correct, if your Honor please, with reference to the indictment, but I didn’t understand that that would preclude him from answering all questions, without some inquiry as to whether your Honor would consider whether the question would tend to incriminate him.

“The COURT.—Not necessarily all questions, but this particular question relates to his entry, as I understand it.

“Mr. GORDON.—Yes, sir.

“The COURT.—If the indictment is based upon the general proposition that his entry was invalid, that is, that he violated the law or committed perjury in connection with it, apparently any question relating to his acts in making the entry would come within the rule. [1948—1618]

(Testimony of Rowland A. Lambdin.)

“MR. TANNAHILL.—The indictment was introduced in evidence before and was based on a charge of perjury in connection with making this particular entry.

“The COURT.—If you desire to ask him certain questions I will consider them.

“MR. GORDON.—Q. I will ask you, Mr. Lambdin, if you ever talked with Mr. Kester or Mr. Kester ever talked with you about taking up a claim under the timber and stone act?

“The COURT.—Now, do you seek to elicit information here as to the entry which he did make?

“MR. GORDON.—Yes, sir.

“The COURT.—The witness will be relieved from answering the question.

“MR. GORDON.—If your Honor please, I understand that if the question that was asked could in any way tend to incriminate him, why, of course, he would be relieved from answering it, but in what way could the question or answering the question that he had talked with Mr. Kester about taking up a timber claim in any way tend to incriminate him?

“The COURT.—As you know, Mr. Gordon, the Supreme Court has laid down a very broad rule, that is, has construed the constitutional prohibition as protecting a witness against giving information which directly incriminates him, and also from being compelled to give information which would lead to other information which might incriminate him. You have suggested that this question relates to his conduct and transactions having to do with his entry

(Testimony of Rowland A. Lambdin.)

of this tract of land. If that is the case, the Court must assume that you ask the question for the purpose of showing, or because you think the answer will tend to show, that the entry was illegal. If the entry was illegal, that implies that this witness committed perjury, it would imply that there were some elements of perjury, and therefore I asked you the question, how [1949—1619] can this question which you now put to the witness be material to your case here unless it also be material to the charge or the offense with which he stands charged?

“Mr. GORDON.—The point that I make is this, if your Honor please, the question that I asked him was directed not alone to what might be involved in his entry—

“The COURT.—Well, if you say that to the Court—but I understood you—

“Mr. GORDON.—I didn't mean to mislead the Court, if your Honor please. Here is the situation: The witness is mentioned as one of the entrymen—

“The COURT.—I will ask the direct question: Does the information which you seek to elicit by this question relate to his entry, not does it relate exclusively to his entry, but does it relate to his entry at all?

“Mr. GORDON.—I don't know that it would relate to any entry; I wanted to ask him about a proposition that Mr. Kester or some other defendant made to him.

“The COURT.—The question is, Mr. Gordon, whether or not, when it came to the trial of this man

(Testimony of Rowland A. Lambdin.)

of the charge of perjury, this same question could not properly be asked of him?

“Mr. GORDON.—Yes, sir.

“The COURT.—Then, he is entitled to the privilege.

“Mr. GORDON.—That is all.

“Mr. TANNAHILL.—That is all.

“Mr. GORDON.—If your Honor please, in view of the fact that this witness, who has just been on the stand, has availed himself of the privilege, we have exhausted the witnesses that we have summoned for this morning and had expected to put upon the stand, and I will ask that an adjournment be taken now until after the noonday recess.

“The COURT.—Very well. Adjourn until two o'clock.

“At this time an adjournment was taken until 2 o'clock.” [1950—1620]

And I shall ask you whether those proceedings were had and whether those questions which I have read were asked you on the occasion referred to, and whether you made the answers that I have also read?

(No answer.)

Q. You decline to answer that question on the same ground? A. Yes, sir.

Mr. GORDON.—Well, that's all for the time being.

The SPECIAL EXAMINER.—Have you anything further, Mr. Tannahill?

Mr. TANNAHILL.—No.

At this time a recess was taken until two o'clock P. M. [1951—1621]

At two o'clock P. M. the hearing was resumed.

[Testimony of J. G. Fralick, for Complainant.]

J. G. FRALICK, a witness called by the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. J. G. Fralick, are you?

A. Yes, sir.

Q. What is your business, Mr. Fralick?

A. I am in the banking business now.

Q. And where is your home?

A. St. Maries, Idaho.

Q. Where did you reside February 14th, 1906?

A. Spokane.

Q. And what was your business at that time?

A. The timber business.

Q. With whom were you associated?

A. The Shevlin-Clark Timber Company.

Q. Did you know Mr. M. J. Dowd at that time?

A. Yes, sir.

Q. Was he connected with you in any way?

A. He was in the employ of the same company.

Q. And do you remember of giving him a letter of introduction to Mr. William Dwyer, one of the defendants, at or about the 6th of February, 1906?

A. Well, I don't remember about that. I know I sent him down to Lewiston. I don't remember about the letter.

Q. And do you remember whether or not at that time you received [1952—1622] a letter, marked

(Testimony of J. G. Fralick.)

Plaintiff's Exhibit No. 79, which I hand you?

A. I did.

Q. And do you remember whether or not about the same time, or at the same time, you received a number of plats, which I hand you, marked Plaintiff's Exhibit 80?

A. I did.

Q. And this letter that I have shown you refers to the matters contained in these plats, does it not?

A. Yes, sir.

Q. Did you ever have any talk with Mr. William Dwyer, one of the defendants, relative to the property marked off on these plats which you have identified?

A. Well, I had talks with him referring to lands in the Clearwater country in general.

Q. Did you ever have any talk with him relative to the property that was represented by the marks on these plats?

A. Yes; I had a general conversation with him.

Q. And did he speak of these lands in any way that would indicate the ownership of them?

A. Well, not that I remember of now. I don't remember that he referred particularly to these lands, except lands in the Clearwater country and the North Fork of Clearwater. He referred to Kester and Kettenbach lands, along with other lands.

Q. Well, were those conversations relative to the lands mentioned in the letter which you have identified?

A. Not specifically, no.

Q. Well, were you negotiating with him relative to any lands?

(Testimony of J. G. Fralick.)

A. Yes; he offered us lands at various times. I never had any specific talk that I recollect of now, relative to these particular lands; that is, entirely on the—what we call the Kester and Kettenbach lands.

Q. Had Mr. Dwyer been to see you relative to what was known as [1953—1623] the Kester-Kettenbach lands before you sent Mr. Dowd down to see him? A. No, sir.

Q. And while you had this letter which you have identified, and these plats that you have identified, in your possession, did you talk with him relative to the option that this letter might be? A. No, sir.

Q. Did Mr. Dwyer indicate to you that he had any interest in any of the Kester-Kettenbach lands?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion and not a statement of fact.

Mr. GORDON.—Q. Did he ever, in speaking of the Kester-Kettenbach lands, refer to “our” lands?

A. No, sir, not that I remember of.

Q. Did you ever talk with Mr. Kester about the lands mentioned in this letter which you have identified and these plats? A. Yes, sir.

Q. And did he refer to these lands in any way that would indicate ownership? A. He did.

Q. What did he say, as well as you can remember?

A. Well, I had a conversation with Mr. Kester in Mr. Flewelling’s presence, in which he referred to the option, and in which we had a general conversation about the lands; and he stated that the lands

(Testimony of J. G. Fralick.)

were worth the money, and he had made a mistake by not looking—

Q. Well, but was there anything that he said that would indicate a claim of ownership?

A. Why, yes; he referred to them as “our lands”; not—

Q. Now,— Excuse me, if you want to finish your answer.

A. Now, I must qualify that. I understood (and I guess everyone that had anything to do with it understood) that all those lands on those plats did not belong to Kester and Kettenbach; or, I mean the [1954—1624] lands that are marked on there as Kester and Kettenbach lands.

Q. Now, there is a key attached to these plats, is there not, Mr. Fralick? A. Yes, sir.

Q. And was it explained to you, or were you given to understand from that key which lands were Kester and Kettenbach's, and which belonged to individuals? A. Yes, sir.

Q. Now, will you explain from that key what you were given to understand as to those who were interested in them; which lands represented individuals, and which marks represented the lands owned by Kester and Kettenbach?

A. Well, I understand that the lands marked with a cross on these plats were Kester and Kettenbach lands; the lands marked with a circle were what we called individual claims, by the claim holders—the claim owners—the original entrymen.

Q. And were you given to understand, either by

(Testimony of J. G. Fralick.)

Mr. Dwyer or Mr. Kester, that they controlled the sale of all the property that is marked there?

A. I don't recollect that either one of those gentlemen told me that they absolutely controlled those lands, although I assumed that inasmuch as they were willing to give an option on all of them that they controlled them to a certain extent.

Q. You never did anything under this option relative to purchasing any of these lands, did you?

A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. I will ask you, Mr. Fralick, if it is not a fact that the lands marked with a circle were marked with a circle for the purpose of showing the lands that Kester and Kettenbach did not own or control, but for the purpose of showing lands in the immediate vicinity of these [1955—1625] lands which they did own and control, which could be purchased?

A. I didn't understand it that way.

Q. But you did understand that they didn't own the lands which were marked with a circle?

A. Yes, sir.

Q. And Mr. Dowd was the one that brought this plat to you, was he not?

A. Well, Mr. Tannahill, I don't recollect now whether he handed it to me or whether he mailed it to me; but it came through Mr. Dowd.

Q. It came through Mr. Dowd? A. Yes, sir.

Q. And there is nothing that you can remember that was said between you and Mr. Dowd and Mr.

(Testimony of J. G. Fralick.)

Kester or Mr. Dwyer, which would give you the impression even that they owned these lands marked with a circle? A. No, sir.

Q. And there was nothing said about them absolutely owning all of these lands which was marked with a cross, was there? A. No, sir.

Q. But you understood that the lands that were marked with a cross they either owned or controlled in some way? A. Yes.

Q. And they never pretended to give you an option on the land which was marked with a circle, did they?

A. Well, I don't recollect, Mr. Tannahill, but that letter there will show.

Q. There is nothing except the lands that is mentioned in this letter, is there? There was no representations made to you except what was made by this letter? A. No.

Mr. GORDON.—May I interpolate a question there?

Mr. TANNAHILL.—Yes.

Mr. GORDON.— [1956—1626] Q. In conjunction with these plats, this letter and these plats were considered to be read together, were they not, Mr. Fralick? A. Yes, sir.

Mr. GORDON.—Excuse me, Mr. Tannahill.

Mr. TANNAHILL.—Certainly.

Q. You have done considerable purchasing of lands? A. I beg pardon?

Q. You have done considerable purchasing of lands, have you not? A. Yes, sir.

(Testimony of J. G. Fralick.)

Q. Isn't it a fact that people frequently offer lands for sale that they don't really own, but lands that they control, or know that they can purchase at a certain price? A. Yes, sir.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all, Mr. Fralick. Thank you very much. [1957—1627]

**[Testimony of Clarence W. Robnett, for
Complainant.]**

CLARENCE W. ROBNETT, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. State your full name, Mr. Robnett.

A. Clarence W. Robnett.

Q. How old are you, Mr. Robnett?

A. Thirty-eight.

Q. Where were you born?

A. Waitsburg, Washington.

Q. Where did you go to school? A. Dayton.

Q. Dayton, where?

A. Washington. Corvallis, Oregon.

Q. Where else?

A. Lewiston, Idaho. Pomeroy, Washington.

Q. How old were you when you stopped school?

A. Twenty.

Q. Where were you living at that time?

A. Pomeroy.

Q. Idaho? A. Pomeroy, Washington.

(Testimony of Clarence W. Robnett.)

Q. How far is that from Lewiston, Idaho?

A. About thirty miles.

Q. Do you remember when you moved to Lewiston, Idaho? A. In the fall of 1892.

Q. What was the first employment that you ever had?

A. In the Lewiston National Bank. I went there December 1st of that year, December 1st, 1902.

Q. You mean 1892? A. 1892. [1958—1623]

Q. Who were the officers of the Lewiston National Bank at that time?

A. C. C. Bunnell was president, George H. Kester was assistant cashier, and Frank Kettenbach was cashier.

Q. That is F. W. Kettenbach? A. Yes; F. W.

Q. And this George H. Kester you refer to was one of the defendants mentioned? A. Yes, sir.

Q. In what capacity were you employed at the Lewiston National Bank when you first went there?

A. Janitor.

Q. How long did you hold that position?

A. Twenty-five months.

Q. What was your salary during that period?

A. Thirty-five dollars a month.

Q. After you relinquished your duties as janitor did you still remain with the Lewiston National Bank? A. Yes, sir.

Q. In what capacity?

A. Why, as assistant in the interior of the bank, clerk, and also did part of the janitor work.

Q. Did you continue in the service of the bank for

(Testimony of Clarence W. Robnett.)

any considerable length of time?

A. About seventeen years.

Q. What were you during the last ten years of your service? A. Bookkeeper.

Q. What books did you keep, Mr. Robnett?

A. All the books, at different times.

Q. When did you discontinue your services with the Lewiston [1959—1629] National Bank?

A. March 19th, 1909.

Q. You know the defendant William F. Kettenbach? A. I do.

Q. How long have you known him?

A. About twenty-five years.

Q. Where did you first meet him?

A. Lewiston, Idaho.

Q. Was he connected with the Lewiston National Bank during the period you were employed there?

A. Why, a portion of the time, not all the time.

Q. Now, take from the year 1900, was he in the bank in the year 1900? A. Yes, sir.

Q. In what capacity was he connected with the bank at that time? A. President.

Q. How long did he remain president of the bank continuously? A. Until July, 1907.

Q. And from the year 1900 in what capacity was Mr. Kester connected with the bank?

A. Cashier.

Q. Did you at any time have a conversation with the defendants Kester and Kettenbach relative to engaging with them in the acquisition of timber lands? A. Yes, sir.

(Testimony of Clarence W. Robnett.)

Q. When was this?

A. Along in the spring of 1902.

Q. Now, state what led up to that conversation, as near as you can. [1960—1630]

A. Well, it had been discussed a great deal in the bank, relative to timber matters.

Q. You say it had been discussed in the bank by whom?

A. Why, between Mr. Kester and Mr. Kettenbach, and other people that came in there and out.

Q. Now, what was the discussion that these two gentlemen had?

A. The timber matters, of other people locating around from out of Moscow, and the people in Lewiston were commencing to get interested, so Mr. Kester and Mr. Kettenbach discussed it quite often, in regards to going into the timber business themselves, and brought up Mr. Dwyer's knowledge of the timber, and that he was a timber man from the east, Minnesota, and so it kind of got to be general conversation there, until along in March, some time in March or April, why, Mr. Kester and Mr. Kettenbach were talking about the timber situation, and they stated that they believed they could make a great deal of money out of the timber if they could get in connection with Mr. Dwyer and form a partnership and let Mr. Dwyer do all the work in the timber.

Q. Now, was anything said at that time relative to the money end of the transaction?

A. No, there wasn't anything said in regards to

(Testimony of Clarence W. Robnett.)

that. They went on ahead and stated though, talked about Mr. Dwyer's knowledge of the timber, and they spoke of some timber that he knew about, claims that he had already cruised and had knowledge of, said he could put people on.

Q. Now, did they outline a scheme in that conversation in your hearing?

A. No, sir, not that I recall at the present moment.

Q. Was there any conversation had relative to how they were to get this timber located? A. No.
[1961—1631]

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Go ahead.

WITNESS.—The first conversation in regards to that was when I called on Mr. Kettenbach in his private office and had a talk with him, shortly after this conversation.

Q. Well, now, state what was said.

A. I went into the office there, Will. Kettenbach's private office, and—

Q. Was that in the bank?

A. In the bank, in the president's private office, and I says, "Will, I overheard a conversation between you and George the other day, and if there is any money to be made out of the timber I would like to get in and work with you and make some money," and Will says, "Clarence, we would like to help you, but we are going into arrangements with Mr. Dwyer and George and myself," and he says, "We are to be equal partners, and I don't see any

(Testimony of Clarence W. Robnett.)

chance for you to get in, but you can have a talk with George, and we will do all we can for you."

Q. At that time, or prior to that time, had you heard any conversation between Mr. Kester and Mr. Kettenbach, or any plans outlined by them as to how they were to get this land? A. Why—

Mr. TANNAHILL.—Allow us the same objection, that it is leading and suggestive.

A. Yes, the plan that they talked over at different times there was relative to getting entrymen to file on the claims and pay them so much for their rights, and the matter was brought up at the time I had a talk with Mr. Kester, what each one was to do.

Q. Well, now, what was said at that time?

A. Well, I met George in the bank, and I said, "George, I have [1962—1632] had a talk with Will, and he told me to come and see you," and I told him I had overheard their conversations and heard them talking in regards to going into the timber with Bill Dwyer and locating people on claims, and I says, "Now, if there is any way I can get into it, I am going to get in and make some money out of the timber, too," and George says, "I will be only too glad to help you out, and I want to see you make some money, but all the claims we know of at the present time that have been cruised, we have people to put on them; but if any time we have got any timber, any claims, and you have got any entrymen or can get anybody that will locate and sell their claims to us for one or two hundred dollars, we are willing to pay that. We want to know, though, we

(Testimony of Clarence W. Robnett.)

don't want to handle anyone but what we know will turn their claims over after the proof is made."

Q. Now, had there,—before this talk that you had had that you have detailed with Mr. Kettenbach and the one you have recited as having had with Mr. Kester, had you heard them speak of the conditions on which they would locate people on these claims?

A. Yes.

Q. Well, now, when was that?

A. That was during one of those conversations in which they discussed it there; I don't know whether it came up in that conversation which I referred to when I see Mr. Kettenbach, or the one before. It was along the line of paying the entrymen from one to two hundred dollars for their right.

Q. And what was the entryman to do?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The entryman was to go up into the timber with Mr. Dwyer and see the claim, come back and file, prove up, and deed the claim over to whoever Kester and Kettenbach designated. They were to furnish all the expenses. [1963—1633]

Q. Now, did you know of any particular locality in which they were to operate?

A. At that time it was around the Potlatch and the Pierce City district.

Q. That was in Idaho? A. Yes.

Q. Now, I will ask you whether or not these entrymen that you have referred to as having heard talked

(Testimony of Clarence W. Robnett.)

about, what were they to sell to make this \$150.00 to \$200.00?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The timber claims they was to prove up on, to be located on by Bill Dwyer.

Q. At that time they didn't have any timber claims, did they?

Mr. TANNAHILL.—We object to it as leading and suggestive, and on the further ground that it calls for a conclusion of the witness, and not a statement of fact.

Mr. GORDON.—I will withdraw the question and ask you what the conversation was relative to that point, that you have detailed as hearing between Mr. Kester and Mr. Kettenbach?

A. Well, the entryman was to file on a claim, and for his right he was to receive \$100.00 to \$200.00, when he deeded the claim over after proof.

Q. Now, when you saw Mr. Kester what did he say to you, when you spoke with him about the conversation you had had with Mr. Kettenbach?

A. He said "Clarence, I don't see how you can get in with us at the present time, that, on account of the timber we have cruised, that we know about, that we have entrymen for at present, we have entrymen for that that will sell their right for one to two hundred dollars, but if you can furnish us any more at any time when we [1964—1634] haven't any entrymen we will treat you right in it, as long as you don't interfere with anything we have under

(Testimony of Clarence W. Robnett.)

headway or any of the claims we want. If you want to locate anybody and go into it on your own hook it is perfectly satisfactory to us and we will see that you get all the money that you need. But any time that you have any claims in your control that we want, why, we want to have the preference right over anybody else."

Q. Now, was anything further said at that time as to the arrangement they had with the people?

A. He says, "We don't take anybody up to the timber except the ones we have an understanding with that after the proof that they deed the claim over for whatever we agree with them." It would range from \$100.00 to \$200.00, according to the entryman.

Q. I will ask you whether or not anything was said between you and Mr. Kester at that time relative to the territory in which your operations were to be confined?

A. There was nothing any more than it shouldn't conflict with them in any way.

Q. Did you ever go into the locality where they were to locate these people, before you started your operations?

A. That is, not in regards to the locality that was mentioned in this conversation, but I was out in another part of the land there, where it wasn't surveyed at that time, had squatters, but not into the surveyed land.

Q. Well, I am speaking about that that was re-

(Testimony of Clarence W. Robnett.)

ferred to, the territory that you all had in contemplation.

A. No; except only through putting on squatters on the unsurveyed, with their knowledge.

Q. Now, what was that? Tell us about that.

A. Well, there was a trip to Pierce City of Mr. Kester and I. [1965—1635]

Q. When was that?

A. That was along some time the latter part of May of 1902.

Q. Now, state how you happened to go on that trip.

A. Well, along about the last of April or the first of May, Mr. Kester told me that Dominick Cameron had located, cruised out and surveyed out some claims up beyond Pierce on one of those little townships that were coming in, and that there was about eighteen claims, and that Will Kettenbach was going to take a couple, and that each one of us could get in there and take a claim for ourselves, and they would be ready to go up some time during that *money*, and he wanted me—wanted to know if I knew of anyone that we could put up there to hold the two claims down, and I told him I thought a Normal School student by the name of Joseph McGee would do it.

Q. Who did you have this talk with?

A. Mr. Kester.

Q. Do you remember whether or not you had a talk in the presence of Mr. Kettenbach at about the same time?

(Testimony of Clarence W. Robnett.)

A. Yes, sir. We went into the directors' room, and Will Kettenbach was present, and the matter was thoroughly discussed, and mention was made of the cabin, that we had to pay \$25.00 a claim for cabins, and \$50.00 a claim for location fee.

Q. Well, was anything said at that time whether or not Mr. Kettenbach had sent some people up into the timber to locate?

A. Yes. George says, "Will has got a couple of parties up there now, holding down a couple of claims for him."

Q. Were any names mentioned as to persons they had up there?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—I don't know how I could make it less leading.

Mr. TANNAHILL.—I don't know how you could make it more so.

WITNESS.—Yes, sir; Sol. Caldwell's name was mentioned. [1966—1636]

Q. Anyone else?

A. And Jack Lowe. Also they stated there at that time that Otto Kettenbach and his brother would very likely be up there on a couple of claims.

Q. Was anything said between you and Mr. Kettenbach relative to what you were to do with these claims?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Yes, there was. I asked George the exact con-

(Testimony of Clarence W. Robnett.)

dition of the land up there, and how soon it would probably be surveyed, and about how long it would be before it would be thrown open, and he stated that the surveyors were in there now, and we would get in there and get our cabins before the surveyors came along, and we would hold it down, and he had made arrangements with the man that had charge of that to make a notation on the maps relative to our particular claims so as to show up on the plats when they come into the land office. He thought we would perhaps be able to file that fall.

Q. What were you going to file that fall?

A. That is, if the State didn't make the selections that we had to file, before the State got in there and made an application and had a prior right, we were to file homesteads or get somebody to file homesteads, and afterwards to relinquish and file timber and stone entries on the claims.

Q. Well, what else was said in that conversation about the cabins?

A. He stated that Dominick Cameron had arranged to have the cabins built on the claims every so far apart down the creek, and that they would be completed by the time we got up there. I told him I would go in with him and we would go up there, and that I would see this Normal School student, McGee, in the next day or two.

Q. Well, did you and Mr. Kester go up to that part of the country? [1967—1637]

A. We did, along about the latter part of May.

Q. Now, state how you went there.

(Testimony of Clarence W. Robnett.)

A. We went up to Orofino and from there we took a rig and went to Pierce City, and from Pierce City we went out with a wagon for a certain distance, and then on out with pack-horses to the claims.

Q. Did you meet anybody when you got up to these claims?

A. Yes; there was several parties in there. There was Sol. Caldwell, and Otto Kettenbach, and Mr. Forsman, and I believe Mr. Shumaker was in there at that time.

Q. Did you go alone on this excursion, or did someone go with you?

A. No; we took Joseph McGee along with us.

Q. Who is "us"?

A. The whole crowd that went from Lewiston, composed of Mr. Kester and myself, Carl Forsman and Mr. Eames.

Q. Now, state what you and Mr. Kester did when you got up to these claims?

A. I got up early in the morning and went out in one direction, and Mr. Kester went out in another; we got back to the cabins about noon, and Mr. Kester says, "Clarence, I have picked out a claim," and he says, "There seems to be more claims allotted here than there are people for them, and so I picked out one claim here, and after dinner we will go down and look it over and see what you think about it, and if it is satisfactory we will arrange for McGee to hold this claim down," and so I says, "All right." So after dinner we went down to the claim and looked it over, and talked about the amount of timber there

(Testimony of Clarence W. Robnett.)

was on the claim, and he told me that he thought Joseph McGee could hold the claim down, and that when it come time to file, if he had to file a homestead, he could file a homestead, and then relinquish [1968—1638] and either file a timber and stone entry on it or one of the rest of us file, and whatever we made out of it we would stand equally, and the expenses. I told him that was all right, that I would see McGee, and we went back to the cabin and I had a talk with Mr. McGee, and Mr. Kester and I and McGee had a talk together, and we went over the whole plan that Mr. Kester and I had outlined, and he agreed to that.

Q. Do you know McGee's first name?

A. Joseph.

Q. Did you state what you were to pay Mr. McGee for this service?

A. One hundred dollars and all expenses.

Q. After that you returned to Lewiston, did you not? A. Yes.

Q. Now, was anything done further relative to the claims you have just referred to?

A. Well, yes; when we returned to Lewiston, when Mr. Kester went home, I went right on up to the bank and met Mr. Will Kettenbach and told him just what we had done, arranged about it, and he asked about the Caldwell claim and the Jack Lowe claim, about Otto Kettenbach and his brother, and was surprised when we came back so soon, and he wanted to know where George was, and I told him that George had gone on home right from the train.

(Testimony of Clarence W. Robnett.)

Q. What became of those claims, the claim that you put Mr. McGee on?

A. Well, Mr. McGee stayed up there on the claim all summer, and in the fall when it was time for the Normal to open he came back to school that winter, and in the following spring the claim had been jumped; before time to enter it up somebody had went on there and squatted and we decided not to do anything further with it, and let it go. [1969—1639]

Q. I will ask you whether or not you ever heard any conversation between any of the defendants relative to the respective entrymen?

A. On the claims up there?

Q. Any claims.

A. Yes, a number of conversations.

Q. Do you know a man by the name of Rowland A. Lambdin? A. I do.

Q. I will ask you whether or not you heard a conversation between any of the defendants relative to Mr. Lambdin? A. I have.

Q. Now, state what it was.

A. This is between the entryman and one of the defendants?

Q. Yes.

A. Well, Mr. Lambdin came into the bank and had a talk with Mr. Kester at the window, either at the cashier's window or the assistant cashier's.

Q. One minute. I will withdraw that question and ask you whether or not, prior to this conversation that you were starting to detail, you heard any conversation between any of the defendants about

(Testimony of Clarence W. Robnett.)

Mr. Lambdin?

Mr. TANNAHILL.—We object to it as leading and suggestive.

A. Yes, sir.

Mr. GORDON.—Q. Now, state where that was and when it was, relative to the entry of the claim.

A. Why, it was in Will Kettenbach's private office.

Q. In the bank was that? A. Yes.

Q. Now, state what it was.

A. Why, George went into Mr. Kettenbach's office and stated, [1970—1640] “Well, I have seen Lambdin on the street, and he has agreed to go up and file on a claim for \$100.00 and deed it over after proof.” And Will asked George, “Do you know whether he is all right”? And George stated, “Yes, I do.” And Will stated that if George knew he was all right, for him to go ahead and make the arrangements for Bill to take him up into the timber.

Q. Who is this “Bill” that you refer to?

A. Bill Dwyer.

Q. Do you know of anything that happened next relative to that transaction?

A. Why, Mr. Lambdin came into the office and first talked with George and wanted to know where he would meet Mr. Dwyer and go up into the timber, and George told him that he would make arrangements and let him know.

Q. Did you hear any of the arrangements between Mr. Lambdin and Mr. Kester at that conversation?

Mr. TANNAHILL.—Objected to as leading and suggestive.

(Testimony of Clarence W. Robnett.)

A. You mean relative to going up into the timber?

Mr. GORDON.—Q. Any arrangements other than what you have stated?

A. Yes; it was talked over there in regards to what he was to receive for his claim and his expense money up into the timber.

Q. Well, now, what was said about that?

A. Well, he wanted to know how about his expense money.

Q. Who wanted to know that?

A. Mr. Lambdin; and George told him he would arrange for that with Bill, that Bill Dwyer would take care of him and pay all expenses, and "Now," he says, "suppose after I file I need some money, some expenses, will it be all right if I can get a little and you can [1971—1641] deduct it out of the \$100.00 I will get for my right," and George says, "Yes, I think we can arrange that all right." And I don't know as there was any particular date set at that time for him to go up to the timber, but anyway Mr. Kester was to let him know. Mr. Lambdin, I believe, was working at the laundry at this time, and he was to let him know there.

Q. Did you know a brother of Mr. Lambdin?

A. Yes, sir.

Q. Do you remember whether his name was mentioned in the conversations between the defendants?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Why, yes; Mr. Kettenbach asked George if he wasn't a brother of Billy Lambdin, and George told

(Testimony of Clarence W. Robnett.)

him yes, and that Billy would see that he came through and everything would be all right.

Q. Did you ever see Mr. Lambdin at the bank after he had been up to view the land?

A. Why, yes.

Q. Well, I will ask you if you ever heard any other conversation between the one you have related between Mr. Lambdin and Mr. Kester and the second visit by Mr. Lambdin to the bank that you can recall now? A. Before he went to file?

Q. No; after this first one, prior to the first conversation you heard between him and Mr. Kester and the time that he did file. Have you related as near as you can the conversations that you remember? A. I don't recall any other before the filing.

Q. Well, now, any that you can remember after the filing?

A. Yes; shortly after the filing, why, Mr. Lambdin came into the bank and wanted to get some money from Mr. Kester, and Mr. Kester let him have the money; I think it was \$25.00, and took his note for it, [1972—1642] either \$20.00 or \$25.00.

Q. Now, was anything said about how this money was to be repaid?

A. Yes; it was to be taken out of the \$100.00 that he was to receive for his right.

Q. Did you hear anything further in any of these conversations relative to what was to be done with this land after proof was made?

A. Why, it was to be deeded to Kester and Kettenbach.

(Testimony of Clarence W. Robnett.)

Q. Do you know whether it ever was deeded to Kester and Kettenbach? A. It was.

Q. Do you know a Mr. Fred Shaeffer?

A. I do.

Q. Do you know where Mr. Shaeffer was employed in the spring and summer of 1902?

A. Lewiston National Bank, as janitor.

Q. As janitor? A. Yes, sir.

Q. Did you ever hear any conversation between him and any of the defendants relative to his taking up a timber claim? A. Yes, sir.

Q. Now, state when that was, as near as you can, and what it was.

A. It was a few days before his trip into the timber to take up his claim, to see his claim before filing.

Q. Where was this conversation?

A. In the working room, main body of the Lewiston National Bank.

Q. Do you remember about the time of day that it was?

A. It was along in the evening, after the bank had closed.

Q. Who were the parties to this conversation?

A. Mr. Kester and Mr. Shaeffer.

Q. Now, tell what was said. [1973—1643]

A. George and I were in the bank there together; I was working on the books, and Mr. Shaeffer came in to do the janitor work, and George says, "Fred, I have spoken to Clarence about looking after your work when you go up to see your claim, so that it will be tended to, and so as soon as Mr. Dwyer is

(Testimony of Clarence W. Robnett.)

ready to go up, why I will let you know, and you can go up and see the claim, if the price that I spoke of, of \$100.00, for your right is satisfactory to you," and Fred says, "Yes."

Q. Had you had any talk with Mr. Kester prior to this time relative to Mr. Shaeffer and a timber claim? A. Yes, sir.

Q. When was that, relative to this conversation you have detailed? A. Why, it was the same day.

Q. Now, state what time of the day that was.

A. The first conversation was in the forenoon some time.

Q. State what that was.

A. Mr. Kester came in and says, "Clarence, do you know where Fred Shaeffer is," and I says, "I think he is down in the furnace room," and he says, "I want to see him relative to taking up a timber claim," and I says, "I think he is down in the furnace room at the present time," and he says, "I will go down and hunt him up."

Q. Now, after the part of the conversation that you have detailed in which Mr. Kester had talked with Mr. Shaeffer in your presence and Mr. Shaeffer had said all right to the proposition that was made was anything further said in that conversation, any other arrangements made between Kester and Shaef-fer?

A. Why, Kester asked him about the expense money, if he needed any money to go up there to see the land to pay his expenses, and he says, "No, I have got some," and George told him, he said, "If

(Testimony of Clarence W. Robnett.)

you need any more Bill Dwyer will look after you and pay the expenses." [1974—1644]

Q. Now, was there any conversation between you and Mr. Kester the same day as to what was to be done with the \$100.00 that was to be paid Shaeffer?

A. I don't know whether it took place that day or not, but it was after when George asked me about the janitor work; he told me that Shaeffer was going to go up into the timber and take up a timber claim and they were going to pay him \$100.00 for his right. Now it might have been after Fred had gone away I had another talk with Mr. Kester in which I asked him about the Shaeffer claim and asked him if Fred was going to get a good claim, and he said, "Yes, a good claim," and he said, "I offered Fred \$100.00 and told him it would help pay for that lot up there that he bought," and he said, "It seemed to please him very much, and he was perfectly satisfied to sell his right for \$100.00."

Q. Do you know who went into the timber with Mr. Shaeffer? A. Mr. Dwyer went up with him.

Q. Was anything said by Mr. Kester at that time as to the value of the claim?

A. He said it was worth about \$3,000.00.

Q. Now, I will ask you what, if anything, you know of the various timber claims that Kester and Kettenbach were connected with from that time on?

A. Yes.

Q. Now, how did you know that, Mr. Robnett?

A. From various conversations, also in assisting them in a great many different ways, also in making

(Testimony of Clarence W. Robnett.)

out plats, and loaning them my pencils to make the check marks in their books, and talking with them in regards to the entrymen as they were marking off the names of the entrymen that had filed, after they had filed on them.

Q. You said something in regard to making plats. Who made these plats? [1975—1645]

A. Well, they made a great many, and I made a great many. And in checking off the different timbers at times when there was sales of them.

Q. Let me ask you how they do. They keep a plat of all of their holdings?

A. Yes; they had two little, what is known as field-books, with township maps in them.

Q. Now, what was kept in those field-books, and how was the information kept in them?

A. Why, they had different ways of designating certain claims, some certain colors for one thing and another for another, and when they would get a claim, a person would file on a claim, they would always mark it off in the book if they were going to get it.

Q. How did they mark it off? Did this book have townships and sections and quarter sections in it?

A. It had the regular township map, only it had been paged and subdivided into quarter sections.

Q. And were the properties that they owned or claimed marked off in those books by cross-marks, or how?

A. By colored pencil, by drawing a line, just mak-

(Testimony of Clarence W. Robnett.)

ing the paper according to the land claimed of a certain color.

Q. Did you have anything to do with the making of those books?

A. No, they kept their own books, but I often made up plats of claims at certain times.

Q. Now, relative to the timber that you located people on, I will ask you to state whether or not they were advised of the timber that you were operating in?

A. Yes, sir.

Q. How were they advised of that?

A. By conversations. [1976—1646]

Q. In any other way?

A. Well, yes, a good many ways, sometimes when the money was advanced for the proof, and trips that I took into the timber.

Q. I will ask you the direct question: Did they keep plats of the timber lands that you were dealing in?

A. Yes.

Q. How did they keep them?

A. Why, they kept that in books there, and then in any of the townships where I had any timber they would mark it in their books with a little different colored pencil from the ones they had of their own.

Q. Was that in the same books that they kept their holdings?

A. Yes.

Q. Were they advised in that way of all the claims that you procured people to locate on?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Not in that way, they wasn't advised of all of

(Testimony of Clarence W. Robnett.)

them, only a great many claims they didn't care anything about, but they were advised of all of them; but there was conversations of the location and the townships.

Q. Now, do you know whether or not Mr. Shaeffer used his own money to make proof, or anything about that? A. He did not.

Q. Tell what you know about it.

A. When it came time for him to make proof Mr. Kester gave him the money to go over to the land office and make proof.

Q. Now, do you ever remember of any conversation between any of the defendants and Mr. Kester as to what he should say when he made his proof?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial. [1977—1647]

A. Why, yes, they discussed it there, and Mr. Kester told Mr. Shaeffer that Mr. Dwyer would inform him in regards to the questions he should answer and how they should be answered, and I don't know but what he went over with him a portion of the questions himself; it seems to me he did in one of the conversations there in the bank.

Q. Now, do you remember whether this conversation was relative,—I will ask you which papers this conversation was relative to, the filing papers or the final proof papers?

A. Why, in regards to the filing, Mr. Kester and him had a conversation then, and he told him that Mr. Dwyer would go up to the land office with him and see to his filing; and when it come down to the

(Testimony of Clarence W. Robnett.)

proof, relative to the questions there, he told him that Mr. Dwyer would tell him how to answer the questions on final proof.

Q. Do you remember whether the questions he would have to swear to, what he would have to state when he made his final proof as to where he got the money—

Mr. TANNAHILL.—It is understood that we have the same objection to this class of evidence, relating to final proof, without repeating the objection.

A. Yes; it was brought up in regards to the money, and he was told how to answer that.

Mr. GORDON.—I am speaking now about the filing.

A. No; there wasn't anything further than that Mr. Dwyer would see that he had the proper papers and his filing would go through all right.

Q. Do you remember whether there was anything said about where he got the money?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. He told him how to answer those questions when he made final proof.

Mr. GORDON.— [1978—1648] Q. I will ask you, Mr. Robnett, whether or not there was a set of final proof papers kept there in the bank?

A. Yes, a little later on; there wasn't right at this time.

Q. Do you know how they got into the bank?

A. Yes; I took them in there myself.

Q. Where did you get them?

(Testimony of Clarence W. Robnett.)

A. In the land office.

Q. I will ask you whether or not those papers were ever used? A. They were used very frequently.

Q. For what purpose?

A. To coach witnesses,—I mean coach entrymen before making their final proof.

Q. Now, I will ask you if you ever heard a conversation between Mr. Kester and Mr. Kettenbach relative to the Shaeffer claim while Mr. Dwyer and Mr. Shaeffer were in the timber? A. Yes.

Q. Now, tell what you know about that.

A. It was,—George says to Will, “Shaeffer and Bill are up in the timber to see the claim that Fred is going to file on,” and he says, “I had quite a talk with Shaeffer and told him I would give him \$100.00 for his right, and he is to deed the claim over as soon as he makes proof, and he is going to use the money to make a payment on his lot.”

Q. Now, was anything said at that time by Mr. Kettenbach as to when they were expected back, or anything of that kind?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. I think that evening, or the following evening.

Mr. GORDON.—Q. Do you remember what was said? [1979—1649]

A. Well, he says, “They will be back,”—Mr. Kettenbach asked George when they would be back, and he said, “They will either be back this evening or to-morrow evening.”

Q. Anything else said about it?

(Testimony of Clarence W. Robnett.)

A. Why, he says, "What is the value of that claim?" and he says, "It is worth \$3,000.00 or better."

Q. Do you know a man named John Roos?

A. I do.

Q. Do you know a man named Sam. Hutchings?

A. I do.

Q. Do you remember ever hearing a conversation between Mr. Kester and Mr. Kettenbach relative to those gentlemen taking up claims? A. Yes, sir.

Q. Well, state what it was and where it was.

A. It was in Mr. Kettenbach's private office.

Q. Well, who did the talking?

A. Why, Mr. Kester came in and says, "Will, I have seen Johnny Roos and Sam. Hutchings out on the street, and I have been talking to them about taking up timber claims, and I believe they will go up into the timber and file, and will deed over their claims for a couple of hundred dollars apiece."

Q. Do you remember whether Mr. Kettenbach said anything at that time?

A. He says, "That will be all right. Has Bill got some claims for them at the present time?" And Mr. Kester says, "Well, I will see him either this evening or to-morrow morning, and I think that he has."

Q. Do you know Ivan R. Cornell? A. I do.

Q. Do you know whether or not Ivan R. Cornell took up a claim under the timber and stone act?

[1980—1650] A. I do.

Q. Do you know anything relative to his entry?

(Testimony of Clarence W. Robnett.)

A. Yes.

Q. Did you ever hear any conversations between any of the defendants relative to that claim?

A. Yes, sir.

Q. Will you state between whom those conversations were? Who was this conversation between?

A. Mr. Kester and Mr. Kettenbach.

Q. Where was it?

A. In Mr. Kettenbach's private office.

Q. At the Lewiston National Bank?

A. Yes, sir.

Q. Do you know whether this was before the entry was made by Mr. Cornell? A. Yes, sir.

Q. Can you give any idea of the year that this conversation took place?

A. I think that was along some time in the early part of 1903, or late in the fall of 1902, I don't know which.

Q. What was said between the defendants?

A. Why, Mr. Kester came into Mr. Kettenbach's private office and said, "I met an old schoolmate of mine from Portland. He went to school with me at Bishop Scott's Academy, and he seems to be in pretty hard straits, and I spoke to him about taking up a timber claim and that we would give him \$100.00, and he needs the money bad, and I think he is going to take the offer, and I believe we can put him on the claim that Bill Dwyer is holding down as a homestead." And Will asked George all about him, and wanted to know if he could be depended on, and George says, "Yes, I think he can; he needs the

(Testimony of Clarence W. Robnett.)

[1981—1651] money, and I believe he will come through and sell his right for \$100.00,” and he says, “Well, go see Bill and see if he can take him up to the timber, and if everything is all right with you we will go ahead.”

Q. Do you know Mr. Ivan R. Cornell when you see him? A. I do.

Q. Did you know him at the time of this conversation you relate? A. No, I didn't.

Q. Where did you first see him?

A. It was either inside of the bank or just outside, on the sidewalk in front of the bookkeeper's window, outside on the street, near the iron railing.

Q. Now, was he alone or with whom was he?

A. He was talking with Mr. Kester.

Q. Now, what was that conversation?

A. Why, I seen them there talking, and that is the first time I ever saw him, and when Mr. Kester came in I asked him if that was Cornell, the party he was talking to Mr. Kettenbach about, and he said he was.

Q. Did you hear any conversation between Mr. Cornell and Mr. Kester on that occasion?

A. No; but I heard one later, in the bank.

Q. When was that?

A. It was just before he went up into the timber, and Mr. Kester was talking to him, I think at the cashier's window, and he asked him, Mr. Kester asked Mr. Cornell when he would be ready to go up into the timber, what time, and he said, “I can go any time,” and he says, “Well, we have made arrangements for you to go, and you be down to the train

(Testimony of Clarence W. Robnett.)

to-morrow morning, and Mr. Dwyer will be there and take you out to the timber and show you the claim. He will pay all your [1982—1652] expenses and your filing fee when you come back, up to the land office, and see about your filing and everything is arranged.” Mr. Cornell says, “All right,” he says, “I will be there.”

Q. Now, did you ever hear a conversation between Mr. Cornell and Mr. Kester about the time of final proof, or after final proof, in the bank?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Yes, sir.

Mr. GORDON.—Q. Where was that?

A. That was at the bookkeeper’s window, and he seemed to be—

Q. Who was he?

A. Mr. Cornell; he seemed to be rather out of sorts in regards to something, and didn’t seem to be willing to come through according to the agreement, and him and Mr. Kester talked for quite a while, and after they got through I asked Mr. Kester what was the trouble, and he says, “He is a little out of sorts and don’t want to come through for the \$100.00, but I guess he will come through all right, and everything will be all right.”

Q. Now, did Mr. Kester say anything else relative to what he had done for—

A. Yes; he says, “I picked him up out here on the street in hard circumstances, and loaned him \$10.00 to help him get along, and gave him a chance here to

(Testimony of Clarence W. Robnett.)

make a hundred dollars, and now, since he is working and got a little money he don't seem to appreciate that, but yet I think he will come through, and everything will be all right; he will make the deed and accept the \$100.00, and deduct what I have already paid him."

Q. Do you remember ever hearing a conversation between any of the defendants relative to contests that Mr. Dwyer was filing? [1983—1653]

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Yes, sir.

Mr. GORDON.—Q. Who were the parties to this discussion?

A. Will Kettenbach and Mr. Dwyer.

Q. Do you remember whether Mr. Kester was there or not?

A. Well, now, there was several at one conversation that took place in Mr. Kettenbach's office, where Mr. Dwyer and Mr. Kettenbach and Mr. Kester were present, all three of them.

Q. Now, who was the spokesman at that conversation? Tell the conversation as well as you can.

A. They were discussing in regards to the homesteads, homestead entries of the timber, that were just thrown open, and Bill Dwyer stated that he was going to contest all those entrymen and locate them, and Will Kettenbach asked if there was any limitation to contests, to how many contests one party could file, and Mr. Dwyer said, no, there wasn't, he could file as many contests as he wanted to, and he

(Testimony of Clarence W. Robnett.)

could put whoever he wanted on the timber if he won out, and Will told him to go ahead and contest them and get all the claims that he could.

Q. Did Mr. Dwyer discuss the character of these entrymen, or how they had located on the homesteads?

A. He said, "They are simply holding down the claims under the homestead to beat the State out, to keep anybody else out, and as soon as,—they intend to relinquish and file a timber and stone entry on it, and I am just going to beat them to it before they get a chance to relinquish their homestead filing."

Q. Now, you say that you understood that Mr. Cornell was to get Mr. Dwyer's homestead claim?
[1984—1654] A. Yes.

Q. State what you know about Mr. Dwyer's homestead claim, in that section of the country.

A. Why, Mr. Dwyer was holding down a homestead, had a cabin on it, and was holding it down, and it was rumored that he hadn't a homestead entry and couldn't hold the claim under the homestead, and that there was other people going to take it, and they thought they had best put somebody on it before somebody else took the claim.

Q. Do you know whether or not anything was said in that conversation about Mr. Dwyer having exhausted his homestead right?

A. No; I couldn't say whether it was in that conversation or not.

Q. Did you ever hear it, at any other conversation between these parties?

(Testimony of Clarence W. Robnett.)

A. Yes; I heard it discussed relative to his holding down a homestead up there when he hadn't a homestead right.

Q. Now, after Mr. Kettenbach had made the assertion and asked the questions that you have detailed here, did you state whether or not Mr. Dwyer said anything as to what he was going to do with the claims that it had been suggested that contests be filed upon?

A. He says, "I have got plenty of entrymen to put on all the good claims I can get and contest them out," and he says, "They don't know, when you file contests, whether I am going to locate people on them or file scrip on them."

Q. Was anything said at that time relative to the locality of lands that were to be involved in these contests?

A. Referring to the contests that come in, about six or eight, I believe.

Q. Do you remember when these were to come into the market, I mean, be opened to entry?

A. Along in the spring of 1904. [1985—1655]

Q. Can you tell the townships, or some of them?

A. Well, there was 38-5 and 6; 37,—I think it was 37-7; and there was ranges 38 and 39, I don't recall just exactly—

Q. Do you remember whether there was anything in 40 or not?

A. No, I don't remember whether there was anything in range 40 at this time or not.

Q. Do you know whether or not contests were filed

(Testimony of Clarence W. Robnett.)

by the defendant Dwyer?

A. Yes; he filed a number of contests. He filed about eighteen at one time, fourteen at one time.

Q. Do you remember any further conversation between any of the defendants relative to these contests?

A. There was another conversation that took place at the cashier's window.

Q. When was that?

A. That was a short time after this. Will Kettenbach and I were standing there talking, along during the noon hour, between twelve and one, and Mr. Dwyer came into the bank, and Will says, "What have you been doing to-day, Bill?" And he says, "I have been filing contests." "How many did you file?" "Fourteen or eighteen." And I spoke up and I says, "What are you going to do, Bill,—take all those homesteads up there?" And he says, "Yes," he says, "I will file forty more if it is necessary."

Q. Did you know Mr. Jackson O'Keefe in his lifetime? A. I did.

Q. I will ask you to state whether or not you were ever a party to a conference between Mr. Jackson O'Keefe and any or all of the defendants?

A. I was present at a number of conversations that took place between Mr. Kester and Mr. O'Keefe, and Mr. Kester and Mr. Kettenbach and Mr. O'Keefe.
[1986—1656]

Q. I will ask you how you heard all of these conversations, Mr. Robnett?

(Testimony of Clarence W. Robnett.)

A. Why, they took place in the main body of the bank-room.

Q. Well, did you just listen, or were you called into the conversation?

A. No; they were just conversations that took place there relative to the timber, and I overheard them as I was going ahead with my work.

Q. Now, will you state, as well as you can, the size of the space that these conversations took place in?

A. Well, it was more in the shape of a,—the bank-room there, the inside of the building was more in the shape of an L, and just about over here the—

Q. Well, now, I will ask you this: The banking-room was on the first floor of the building, was it not? A. Yes, sir.

Q. And they had a railing and windows around two sides of the room, did they not? A. Yes.

Q. That went back to one side of the building and then formed a right angle and connected with another side? A. Yes.

Q. In other words, two sides of the first floor, the walls and this railing made the space that you refer to? A. Yes.

Q. Will you tell, as well as you can remember without measuring it, about what the length of the sides of this space was?

A. Why, the north side—

Q. Now, we don't know that, whether it is north or south here. State the lengths of the railings as they were. [1987—1657]

A. The first railing on the bookkeeper's desk,

(Testimony of Clarence W. Robnett.)

over next to the bookkeeper's window, the railing was about eight feet, and then for a space there by the window, perhaps two feet and a half, and then another little jog running up from the window I have just described is the assistant cashier's window, and then a jog running up to the cashier's window of about four feet, and then a space of about two feet and a half to where it turned again, and run direct east to the president's office.

Q. Now, that doesn't mean much. What was the space along the front of the bank that they had enclosed, what was the outside distance from one side of it to the other, was it ten feet or forty feet?

A. Well, now, in one way—

Q. I am asking you,—it couldn't be two ways if I am asking you for the front way.

A. Well, that was a distance of about thirty feet.

Q. Well, then there was another side of this inclosure that ran at right angles to that, is that correct?

A. Yes.

Q. And how long was that side?

A. About twenty, eighteen to twenty.

Q. Now, did the ends of those two railings each meet the wall, one wall of the building or the other?

A. Yes.

Q. Well, then there was a space in there of about thirty by twenty feet, is that correct?

A. Yes.

Q. Now, where was the office of Will Kettenbach, relative to this inclosure that you have described?

A. The office was in one corner.

Q. And where was the directors' room, relative to

(Testimony of Clarence W. Robnett.)

this inclosure? [1988—1658]

A. It was across the hallway on the same floor.

Q. And to get from the inside of the bank where the teller's window, and the bookkeeper's and the cashier's window was, you had to go out of that inclosure and across the hall?

A. Yes; an opening ran underneath the stairway.

Q. Now, where was Mr. Kester's desk relative to the office of Mr. Will Kettenbach?

A. Right alongside of it in the inclosure.

Q. And was this office of Mr. Will Kettenbach's a room off from the inclosure that you have described, or was it in a glass partition?

A. Just a glass partition, part way up, part glass and part grill.

Q. Did it go clear up to the top of the ceiling?

A. No; just about seven feet.

Q. And you entered that from the inclosure that you have described? A. Yes.

Q. And you say that Mr. Kester's desk was adjoining that?

A. Yes, sir; right alongside of it.

Q. Did the back of the desk go up against it?

A. The back of the desk—

Q. When he sat at his desk he faced right at one of the sides of Mr. Will Kettenbach's office?

A. Yes, sir.

Q. Where was your desk, relative to Mr. Kester's desk?

A. The flat-topped desk was right close to his, the distance from one corner of that desk to Mr. Kes-

(Testimony of Clarence W. Robnett.)

ter's desk wasn't over two feet or two feet and a half.

Q. How far was your desk from the window where you kept the books?

A. About ten feet. [1989—1659]

Q. Mr. Robnett, I was asking you whether you had ever heard any conversations between Jackson O'Keefe and any of the defendants? A. Yes, sir.

Mr. TANNAHILL.—Had you completed your examination on these contests, Mr. Gordon?

Mr. GORDON.—Yes, unless there is something that I think of that I may want to ask him.

Mr. TANNAHILL.—The defendants now move to strike out all of the evidence of the witness relative to the filing of contests by the defendant William Dwyer, upon the ground that it is irrelevant, incompetent and immaterial, and does not tend to prove or disprove any issue in the cause.

Mr. GORDON.—Q. Did you ever hear any conversation between Mr. Jackson O'Keefe and any of the defendants relative to taking up timber claims?

A. Yes, sir.

Q. Now, do you know when this was?

A. (No answer.)

Q. I don't ask you to tell the exact date—as near as you can?

A. It was along in the winter, or rather the fall of 1903, and the spring of 1904.

Q. Now, where was the conversation, and between whom was it?

A. Why, Mr. Kester and Mr. Kettenbach and

(Testimony of Clarence W. Robnett.)

Mr. O'Keefe came out of the directors' room; they was in there having a talk, and they stopped in there while Mr. O'Keefe was waiting for the stage to go to Asotin, and Mr. Kester asked him regarding the securing of certain entrymen to take up claims, and he spoke about certain parties in Asotin that he would get.

Q. Do you remember him naming those parties, who they were?

A. Well, it was two relatives of his.

Q. Do you remember what their names were?

A. The Taylors—the two Taylor boys. [1990—1660]

Q. And do you remember anybody else?

A. David Bingham; and then he thought there would be two others that could be secured.

Q. Do you remember whether he named them or not?

A. No, I don't think they were named at that time.

Q. Now, did you hear anything of the arrangements that they had, or were there any?

A. Yes; they spoke then relative to what about what they would want, and he said, "Oh, I think you can get them for perhaps \$150 apiece, maybe you may have to pay them \$200, but anyway you can get them at what is right, and we can depend on them."

Q. Now, was anything said about the money at that time for expenses?

A. Yes; they said whatever their expenses are, Mr. Kester says, "Jack, whatever their expenses are going up there you pay it by drawing checks and

(Testimony of Clarence W. Robnett.)

keeping a memorandum of it, so we will know just what it is."

Q. And did you ever hear any further conversation after the—or, do you know whether any of these entrymen were procured? A. There was five.

Q. Do you remember who they were?

A. Well, there was the two Taylor boys, and this Bingham, and Drummel—

Q. What did you say?

A. No—I can't recall.

Q. Dammarell?

A. Dammarell—that's the name.

Q. Was there a man named Prentice?

A. Yes, a man named Prentice.

Q. Well, do you know of any others?

A. Well, Mr. O'Keefe.

Q. Now, do you remember any other conversation that was had between any of the defendants and O'Keefe prior to the filing of entries [1991—1661] by these entrymen?

A. Yes, there was several different conversations took place in regards to these claims. They were always mentioned as the O'Keefe claims. There was conversations took place between Mr. Kester and Mr. Kettenbach, and also between Mr. O'Keefe and Mr. Kester and Mr. Kettenbach.

Q. Now, do you remember the occasion of these gentlemen that you have mentioned making their proof?

A. Why, prior to the time of making proof Mr. O'Keefe was in the bank, and George told him when-

(Testimony of Clarence W. Robnett.)

ever—he says, “Jack, whenever you are ready for the proof—the day of the proof—why, you come over here and get the money and give the boys the money, and then take them up to the land office, and afterwards why you can look after making up the transfers—look, after that—take the matter in hand and look after it, and see that everything goes through all right.”

Q. Well, do you know whether or not he got the money there? A. Yes, sir.

Q. Do you remember how he got it? State what you know relative to that transaction.

A. Why, I know that he came into the bank and got the money and gave a check for it, and I think it was either kept in—well, in fact, paid in a cash item, or entered up to the Asotin Land and Irrigation Company.

Q. Do you know whether or not Mr. Kester and Mr. O’Keefe were engaged in any other business?

A. Yes; they were interested in the Cloverland.

Q. Cloverland what?

A. Well, it was an irrigation project up there along Cloverland.

Q. Well, do you know whether or not they were officers in that concern?

A. Mr. Kester was the only one that was interested, and Mr. O’Keefe; the two of them owned the proposition. It was the Asotin [1992—1662] Land and Irrigation Company.

Q. You mean their account was carried in the Lewiston National Bank in that name?

(Testimony of Clarence W. Robnett.)

A. Yes, sir.

Q. Well, do you know what became of the five claims you have referred to, and whether there was ever a settlement made of them?

A. Yes; at different times they were deeded to Kester and Kettenbach.

Q. Well, do you know anything about who paid for the claims?

A. Well, the claims were paid for by Kester and Kettenbach.

Q. Well, do you know that of your personal knowledge? A. Yes, sir.

Q. Now, state what you know about that.

A. Well, from conversations that took place, it was brought up at different times in regards to the settlement in regards to these different claims, and in making up—taking up the items out of the bank, and making the cash items, it was taken up by Kester and Kettenbach and included at different times in the cash items, it was taken care of.

Q. Well, now, explain what you mean by the cash items.

A. Well, now, if Mr. Kester or Mr. Kettenbach wanted to use any cash for any particular purpose, why they would take the cash and put in a cash item, and that was carried there until they wanted to issue their checks.

Q. Now, what do you call a cash item—a memorandum?

A. Yes, a memorandum that there is so much cash taken out of the cash by a certain party, and that is

(Testimony of Clarence W. Robnett.)

counted as cash until it was taken up by giving a check.

Q. And did you have anything to do with attending to that part of the banking business?

A. Yes, sir.

Q. Well, now, state how it came about. [1993—1663]

A. Well, now, there was the accounts; I was on the depositors' ledger and also worked at the window and added up the cash items, and had charge of the different books in which those different accounts was run, so that I knew how the transactions was entered there, and also the Asotin Land and Irrigation Company, there was some of those items went there, and afterwards they were taken up and settled by credits in disposing of it.

Q. Now, these cash items—these memoranda that were carried in the cash—would they show upon their face what they were for, or anything of that kind? A. Sometimes, yes.

Q. And do you remember any of the transactions of that account relative to the O'Keefe claims?

A. Yes; I remember the transactions that took place; that is, I don't recall clearly just how it was, but I know the transactions were fixed up there whereby the money that was finally advanced by Kester and Kettenbach they paid for them.

Q. Do you know a man by the name of Goldsmith?

A. I do.

Q. What is the name of the man Goldsmith that you know? A. M. L. Goldsmith.

(Testimony of Clarence W. Robnett.)

Q. And what was his calling?

A. Why, a farmer, and also a Deputy United States—I mean a Deputy State Land Selector.

Q. And do you ever remember of hearing any conversation between him and any of the defendants, relative to land transactions? A. Yes, sir.

Q. State when the first one was, as near as you can remember.

A. The first conversation took place in Mr. Kettenbach's office.

Q. Approximately when was that?

A. Why, I think some time in December, in 1903—just around the first of the year. [1994—1664]

Q. Do you mean the last of the year?

A. The last of the year, or the first of January, 1904.

Q. Now, between whom was that conversation?

A. The conversation was between Will. Kettenbach, George Kester and Goldsmith.

Q. Well, did you hear the conversation between those gentlemen and anyone else prior to the conversation you refer to?

A. Why, the conversation prior to that time was between Mr. Dwyer and Mr. Kettenbach and Mr. Kester.

Q. Well, now, was that just prior to this December or January?

A. Yes, just prior to the conversation with Goldsmith.

Q. And where was this conversation?

A. In Mr. Kettenbach's private office.

(Testimony of Clarence W. Robnett.)

Q. And will you state what was said at that conversation? What was this conversation between Dwyer, Kester and Kettenbach?

A. Why, it was relative to getting Mr. Dwyer appointed as a timber cruiser, there, to go up and estimate that timber for the State.

Mr. TANNAHILL.—Now, just wait a minute. Just let him state the conversation.

Mr. GORDON.—Q. Well, state what you can relative to the conversation, as near as you can.

A. Well, the gentlemen were sitting in Mr. Kettenbach's private office, and George spoke up and asked if there was any way that Bill could get the position, so that he could go up there and pick out this land that the State was going to select, and also to catch on to land that they could get a hold of, and Will. Kettenbach spoke up and said, "Yes, I think I can arrange that"; he says, "Goldsmith, I think, will do what I want him to, and I will have a talk with him and see if I can't have it arranged." Well, George stated if it could be done why it would very likely help them out a great deal, and be a good thing.

Q. Was anything said as to how it was to help them out? [1995—1665]

A. "Of course," he says, "if he goes up into the timber there to make the selections of the State land, why he could leave out the claims that we want, and make a notation of them, so that we can locate the claims."

Q. Now, do you know whether the State had made

(Testimony of Clarence W. Robnett.)

its selections then that were subsequently made in April? A. No, they hadn't.

Q. Had the plats been filed?

A. No; they hadn't made them.

Q. And was this conversation relative to picking the land that the State would file on? A. Yes.

Q. Well, now, do you know anything further that was said at that time?

A. Well, Mr. Kester said, "Well, Will, you see Mr. Goldsmith and see what can be done, and if we can arrange that Bill can go up into the timber with him," and Will said, "All right, I will get word to Mr. Goldsmith to come in and see me."

Q. Well, did you ever see Mr. Goldsmith at the bank? A. Yes, sir.

Q. After that? A. Yes, sir.

Q. How long afterwards?

A. Why, it was only a day or two.

Q. Well, now, do you know who he saw at the bank?

A. Why, he was talking with Mr. Kettenbach first.

Q. And did you hear what was said?

A. Just a portion of what was said.

Q. Well, now, did you hear anything that was said relative to Mr. Dwyer's employment?

A. Yes. Mr. Kettenbach says, "Mr. Goldsmith, what I sent for you for was to see if we couldn't arrange to appoint Mr. Dwyer as [1996—1666] one of your selectors to cruise the timber and make the selections for the State," and Mr. Goldsmith says

(Testimony of Clarence W. Robnett.)

“Well, I really don’t know how I can do that, but I will see.”

Q. Did he give any reason?

A. Well, he said Mr. Dwyer was out of the state, and there might be objections to it, and he thought that perhaps already there had been people spoken to by Mr. Jackson for that position, but if he could arrange it he would do so.

Q. Well, did Mr. Kettenbach have anything to say about the objections that were raised?

A. Well, he said that didn’t make any difference. He says, “You can state that the only man that knows anything in regards to that country out there is Mr. Dwyer, and he is just across the state line, and Clarkston is practically the same as Lewiston; he is just across the river, and there is no reason why that should make any difference, and he is operating up there in the timber, anyway, and that wouldn’t be any reason why you should not get a man across in Clarkston.” Mr. Goldsmith said, “I will see what I can do, and if I can possibly arrange it why I will have Mr. Dwyer go up with me, and I will let you know.” And a few days after that Mr. Goldsmith came into the office to see Mr. Kettenbach, and told him he could arrange to employ Mr. Dwyer.

Q. And do you know whether Mr. Dwyer was employed? A. Yes, he was.

Q. By this Mr. Goldsmith? A. Yes, he was.

Q. Now, do you know whether there was any conversation between Mr. Goldsmith and any of the defendants relative to lands that the defendants did

(Testimony of Clarence W. Robnett.)

not want selected? A. Yes, sir.

Q. When was that?

A. That was just prior to the time that the State made its selections. [1997—1667]

Q. Now, tell what you know about that.

A. Well, Mr. Goldsmith came into Mr. Kettenbach's private office and Mr. Kettenbach handed him a plat and a paper.

Q. Well, now, do you know what this paper was?

A. Nothing more than what Mr. Kettenbach told me afterwards. I didn't hear the conversation that took place there, and after Mr. Goldsmith went out I asked Mr. Kettenbach if he had arranged to hold out my claim.

Q. What was your claim?

A. That is the claim known as the Mrs. Harris claim; and he says, "No, Clarence, I forgot all about it, but," he says, "I gave him a list of claims that Bill had given me to have him hold out"—that there were maps prepared by Bill—"but," he says, "if you will speak to Mr. Goldsmith about it he will hold out your claim. Write out the numbers of it on a slip of paper and hand it to him and tell him that I told you to give it to him."

Q. Now, did you hear any conversation between Mr. Kettenbach and Mr. Dwyer just prior to that time? A. Yes.

Q. Well, state what that was.

A. Well, Mr. Dwyer came in from the timber a few days ahead of Mr. Goldsmith, a day or two, and he came in there—

(Testimony of Clarence W. Robnett.)

Q. In where?

A. In Mr. Kettenbach's private office.

Q. Yes?

A. And Will says, "Well, hello, Bill, when did you get back?" He says, "I have just got in from the train." He says, "How is everything going?" He says, "All right." He says, "Have you got memorandums made of the land you want out—not selected by the State?" and he says "Yes." He says, "Get them up in shape and I will see Goldsmith and give them to him."

Q. Now, was anything said about Mr. Melvern Scott at that time? [1998—1668]

A. Well, he said that Melvern Scott had come down with Goldsmith at the time he came in.

Q. Well, do you know whether anything was said about Mr. Scott and Mr. Fitzgerald relative to Squatters?

Mr. TANNAHILL.—We object to that as immaterial, leading and suggestive.

Mr. GORDON.—Well, I will withdraw the question.

Q. Now, did you see Mr. Goldsmith relative to the Harris claim? A. I did.

Q. What did you say to him?

A. Why, I met him up in—I think it was in front of the Raymond Hotel and gave him the slip of paper and told him that that was the claim that I wanted him to hold out, and that Mr. Kettenbach had told me to tell him so, and he says, "All right, I will see what I can do for you."

(Testimony of Clarence W. Robnett.)

Q. Well, do you know whether he held the claim out or not?

A. No. The claim was in the first papers that was put in of the timber—or in his report—that claim was included; and I spoke to him about it, and he says, “Well,” he says, “I think that can be arranged later, when they have got to make an amended filing to these conflict entrymen, and if they don’t go ahead and contest them or make entries before a specified time why it will be dropped out, and you can go right ahead.”

Q. Do you know of any other land than this claim that you have referred to that the defendants desired Mr. Goldsmith not to include in the State selections?

A. Well, after the State had made the filing of conflict claims, Mr. Kester and also Mr. Kettenbach both made the statement that there would be plenty of timber left after the State went through; that they wasn’t going ahead with the contest of entrymen; that they just had all the timber they wanted for all their entrymen, and that included a number of fine homesteads up there of people that were squatting on the [1999—1669] land.

Q. Do you know Guy L. Wilson? A. Yes, sir.

Q. Do you know where his claim is located?

A. It is located in this bunch of timber that the State didn’t go ahead and make final selection of.

Q. Do you know what land was to be cruised by Mr. Goldsmith and Mr. Dwyer?

A. It was the six townships that were to come into the market on the—

(Testimony of Clarence W. Robnett.)

Q. April 25th, 1904? A. Yes.

Q. Well, was that in the vicinity of the claim that I have referred to—the Adams claim? A. Yes.

Q. You said a while ago that Mr. Kettenbach gave Mr. Goldsmith a list of the lands to be left out, did you? A. Yes, sir.

Q. Well, do you know how that was done? Was it by plats or what?

A. A plat—plats and a roll of paper with the numbers of the paper.

Q. Do you know where that plat was made up?

A. Why, Mr. Dwyer made it up and gave it to Mr. Kettenbach.

Q. Did you see that at all?

A. No, I didn't see the plat, any more than just seeing them handle the plats and the paper.

Q. When was that?

A. That was just before they made their filing, the same day.

Q. Well, where did you see it?

A. In Mr. Kettenbach's private office.

Q. How did you happen in there? [2000—1670]

A. I wasn't in his office; I was standing there waiting for Mr. Goldsmith to come out so that I could find out whether Mr. Kettenbach had made any mention of my claim.

Q. That is the Harris claim you mean?

A. Yes. Mr. Kettenbach and I had had a conversation prior to that time in which this was discussed, what they were going to do, and I spoke to him and told him to put my claim in.

(Testimony of Clarence W. Robnett.)

Q. Now, do you remember anything about the line-up at the land office April 25th, 1904? A. Yes, sir.

Q. Do you know whether or not the defendants had anything to do with that line-up?

A. They had about 18 entrymen in there.

Q. Well, do you know who the entrymen were that they had in that line?

A. Why, I can call quite a number of them. There were the entrymen there that Jackson O'Keefe had.

Q. The five that you have mentioned? A. Yes.

Q. And was Jackson O'Keefe in the line?

A. Yes; and there was Mrs. White.

Q. What Mrs. White?

A. Mrs. Elizabeth White.

Q. And is she a relative of any of the defendants?

A. She is the mother in law of Mr. Kettenbach.

Q. And who else?

A. And Will. Kettenbach's wife, and Mrs. Edna Kester, wife of George H. Kester, and Miss Kettenbach.

Q. What Miss Kettenbach?

A. An aunt of Will. Kettenbach; and Mrs. Hallett.

Q. Who is she? Is it Martha E. Hallett? [2001—1671] A. Martha E. Hallett.

Q. Was she related to any of the defendants?

A. No, she wasn't related, but she was a friend of Mr. Kester's and was stopping there at his place; and Mamie P. White, wife of Will. White. Will. White is a brother in law of Mr. Will. Kettenbach.

Q. Well, do you know whether Mrs. Justice was

(Testimony of Clarence W. Robnett.)

in that line? A. Yes.

Q. And do you remember anyone else?

A. Well, I think Mrs. Atkinson was in there.

Q. Who is Mrs. Atkinson?

A. A sister of Mr. Kester's. I know there were 18 of the entrymen that they had there.

Q. Well, do you know whether Mr. Bingham was there? A. Yes, he was there.

Q. And do you know whether Mr. Guy L. Wilson was there? A. Yes, he was there.

Q. And Fred. Justice?

A. I wouldn't be positive about him. I know he filed.

Q. And do you know Mr. Daniel Greenberg?

A. Yes, sir.

Q. Do you know whether he was there or not?

A. I don't know whether he was in the line-up.

Q. Now, you have said that Mr. William F. Kettenbach's wife was there; are you sure of that?

A. Yes, I seen her there in the morning, and she was among some of the claims that were to be filed on, and I think she was in the line-up.

Q. Now, do you know where these 18 people that you referred to received their filing papers?

A. From Mr. Dwyer.

Q. And do you know where Mr. Dwyer got the papers? A. He got them from me. [2002—1672]

Q. Well, how did he happen to get them from you?

A. I went to the land office and got them for him.

Q. Were you directed by anyone to get them from the land office?

(Testimony of Clarence W. Robnett.)

A. Mr. Kettenbach asked me to go up and get the papers for Mr. Dwyer.

Q. Did he say how many to get?

A. Yes; he said to get 18 sets.

Q. Do you know who was present when he told you that?

A. Mr. Dwyer and Mr. Kettenbach. He called me into the directors' room.

Q. And who did you give them to when you returned, do you know?

A. I gave them to Mr. Dwyer.

Mr. GORDON.—Now, I understand that Mr. Lambdin and Mr. Goodwin are here, and if he may be excused for a moment I will bring them in.

Mr. TANNAHILL.—All right. [2003—1673]

**[Testimony of Francis M. Goodwin, for
Complainant.]**

FRANCIS M. GOODWIN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Francis M. Goodwin, are you?

A. I am.

Q. And in the year 1905 you were a Special Agent of the general land office, were you not, Mr. Goodwin? A. I was.

Q. Mr. Goodwin, do you know the witness here, Rowland A. Lambdin? A. Yes.

Q. Do you ever remember of taking an affidavit of him relative to his timber entry? A. I do.

(Testimony of Francis M. Goodwin.)

Q. I show you what purports to be an affidavit signed by Rowland A. Lambdin May 27th, 1905, and ask you whether that is the signature of the witness Rowland A. Lambdin? A. It is.

Q. And did he swear to that before you in your official capacity? A. He did.

Q. And is the signature of Mr. O'Fallon there?

A. It is.

Q. And was he present at the time he swore to that affidavit? A. He was present.

Q. Now, will you state the circumstances under which that affidavit was made?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, referring to something occurring outside of the presence of either of the defendants, and neither of them can be bound by anything that occurred in relation to the making of the affidavit.

WITNESS.—Would you like to have a full statement leading up to it? [2004—1674]

Mr. GORDON.—Yes.

A. As I recall the matter, Mr. O'Fallon and I went to Mr. Lambdin's house in Lewiston and asked him to give us a statement relating to his timber and stone entry, and Mr. Lambdin told us that he was not yet ready to make the same, but that he would meet us at the—what is the name of that hotel down there?

Q. The Bollinger?

A. The Bollinger Hotel, I think it was that afternoon, if he did not receive certain moneys which he was expecting from one of the defendants, and give

(Testimony of Francis M. Goodwin.)

us a complete statement as to his timber and stone claim. That afternoon Mr. Lambdin came to the hotel, Mr. O'Fallon and I met him, I don't know which one of us, and took him to the room, where we had a typewriter, and I wrote out his statement on the typewriter in his presence at that time, in response to our joint questions, Mr. Lambdin answering the questions as we asked them, and the substance was being written down at the time.

Q. And is that the paper that you prepared?

A. That is the paper that I prepared at that time.

Q. And I will ask you whether it was read over to him, or whether he read it over himself, before signing it?

A. It was read over to him; either he read it over or we read it to him, I couldn't state which. I remember we went over it carefully after we prepared it.

Q. And he signed that paper and delivered it to you?

A. He signed that paper and delivered it to us.

Said affidavit was thereupon marked by the Reporter, at the request of Mr. Gordon, as Exhibit 96, for Identification.

Mr. GORDON.—Now, if you will retire for just a moment, I will ask Mr. Lambdin a few questions. You need not go out of the room. (To Mr. Tannahill.) Do you want him to go out?

Mr. TANNAHILL.—No, I don't care about it.
[2005—1675]

**[Testimony of Rowland A. Lambdin, for
Complainant (Recalled).]**

ROWLAND A. LAMBDIN, a witness heretofore called in behalf of the complainant, and duly sworn, upon being recalled by the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Lambdin, I will read to you the affidavit that has been identified by Mr. Goodwin here, and marked Plaintiff's Exhibit 96, for Identification,—

Mr. TANNAHILL.—The defendants severally object to the reading of the affidavit in evidence, or reading it into the record in the form of a question, or otherwise, upon the ground that it is irrelevant, incompetent, and immaterial, and simply an effort to get something into the record which is incompetent and inadmissible.

Mr. GORDON.—Q. — and ask you whether or not you signed this affidavit, which reads as follows:

[Plaintiff's Exhibit No. 96 for Identification.]

“State of Idaho,

County of Nez Perce,—ss.

Rowland A. Lambdin, being of legal age and being first duly sworn, on his oath deposes and says:

I reside at Lewiston, Idaho. I am 30 years of age the coming August. In April, 1902, about ten days or two weeks before my application to make a timber and stone entry at the Lewiston, Idaho, land office I was approached by Samuel C. Hutchings as to my taking a timber and stone claim. Hutchings asked

me if I wanted a chance to make One Hundred Dollars; and I told him yes; and he then explained that he could take a timber and stone claim and get that sum from George H. Kester for his right; but for some reason he (Hutchins) was unable to accept the offer. Hutchins said he could make it all right with Mr. Kester so that I could also take a claim on the same terms or words to that effect. At that time I did not know the said George H. Kester [2006—1676] personally. Within a day or two Hutchins saw me again and told me to go down to the bank and see Mr. Kester; and so I went to see Mr. Kester at the time appointed at the bank. Mr. Kester was at that time cashier of the Lewiston National Bank.

I knew Mr. Kester by sight, and at the time appointed called to see him and told him who I was and that Mr. Hutchins had said that he (Kester) wanted to see me. We had a private talk together, and Mr. Kester explained to me that he wanted me to go up with William Dwyer to examine a timber claim, that all my expenses would be paid, that I was to make a timber and stone entry and he would furnish the money with which to make final proof and to pay all necessary expenses; I was then to deed the land, and was to receive One Hundred Dollars when the deed was delivered. When I left Mr. Kester he told me that when Mr. Dwyer was ready to go up to the timber belt I would be advised. In about ten days I was informed that Mr. Dwyer was ready to go up to the timber and that I was to meet him at the train the next morning, which I did. We left Lewiston about 7:30 A. M., meeting Mr. Dwyer at the train. It is my recollection that we went via the N. P. R. R.

to what was then called Vollmer but now known as Troy, a station on the said railroad. Mr. Dwyer furnished me with a ticket. From Vollmer we went to the timber by horse back, Mr. Dwyer procuring the horses. We stayed two nights in the timber. While in the timber Mr. Dwyer and I had some conversation as to the questions I should have to answer when making final proof, but I do not recall distinctly just what the conversation was. Mr. Dwyer showed me over what I understood was my claim.

I then returned to Lewiston and on the same day made my application or filing for the land. My entry was for the SW. $\frac{1}{4}$, Sec. 29, T. 42 N., R. 1 W. Before filing I went to the Lewiston National Bank and saw George H. Kester and he gave me the money to make my entry. [2007—1677] and to have the filing papers prepared, telling me just what the money was for or where it was to be paid. Mr. Kester furnished me with the exact amount of money necessary to have the filing made and papers prepared. The papers were prepared by Thomas Mullen, to the best of my recollection.

My agreement with Mr. Kester was that I should receive One Hundred Dollars when final proof should be made, but as a matter of fact I received different sums from him from time to time, so that when I came to make final proof I had received the entire sum of One Hundred Dollars from him. At one time I drew a check on the Lewiston National Bank for Thirty-five Dollars, which Mr. Kester honored.

On July 22, 1902, I offered final proof on my claim, and William Dwyer and a party who lived in the

vicinity of my claim, whose name I do not now recall, acted as witnesses. The second party was the one with whom we stopped over night while I was out with Mr. Dwyer inspecting the land.

William Dwyer arranged for the other witness to be present to act when final proof should be made.

On the day on which final proof was offered, I went into the private office or directors' room of the Lewiston Bank and George H. Kester counted out Four Hundred Dollars with which to offer final proof, to pay fees and expenses, and Twenty Dollars to pay one of the witnesses, making in all about Four Hundred and Thirty Dollars, to the best of my recollection. As near as I recall the final proof was taken about 10 o'clock in the morning. While the proof was being taken I hand the witness whose name I do not recall, Twenty dollars as his fee. Before I received the money, Mr. Kester told me to find out how much the witness wanted, and the money was given me by Mr. Kester to pay for that purpose, with the other money as above stated. Mr. Kester and I were alone in the room when the money was handed me. About an hour [2008—1678] after receiving the money from Mr. Kester, I paid over Four Hundred and some dollars of the same to the Receiver of the land office. I do not think I was out of the building after the money was handed me by Mr. Kester until I paid over the money to the Receiver of the land office.

Mr. Kester told me I should be asked by the land office officials where I got the money, to state that I had had part of the money and had borrowed part of it from the bank.

I had nothing to do with the advertising of my final proof and did not pay the bill for the same; and I do not know who did pay the bill, unless the land office included the bill in the amount I paid to the Receiver.

When I came down from the land office, after making final proof, I went into the bank and Mr. Kester asked me if I had my final receipt, and I handed it to him. Then Mr. Kester went with me across the street, to the office of the Notary Public H. K. Barnett, where I found a deed already prepared, deeding the said timber claim, which I then and there signed and acknowledged. This deed conveyed my timber claim to Geo. H. Kester and W. F. Kettenbach. After signing the deed, Mr. Kester asked me where my wife was and on being told went out and called a cab, and the Notary Public and I went out to my house where my wife also signed the deed.

In making my final proof, in answer to the question as to who located me on the claim, I stated William Dwyer, and that I paid him One Hundred Dollars for locating me; but I had no agreement or understanding with Mr. Dwyer that I should pay him anything and never did pay him anything for locating me. To the best of my recollection, Mr. Dwyer himself told me to make this statement as to his fee when offering final proof. I did not pay Mr. Dwyer anything for appearing and acting as a witness in my final proof.

At the time I signed and acknowledged the deed I did not know [2009—1679] the consideration stated in the deed, but I have since learned that the

(Testimony of Rowland A. Lambdin.)

amount stated therein was Eight Hundred Dollars.

I never had any conversation with W. F. Kettenbach as to my claim, all my arrangements being made with Mr. Kester, or Mr. Dwyer.

R. H. LAMBDIN.

Attest: S. F. O'Fallon.

Subscribed and sworn to before me this 27th day of May, 1905.

FRANCIS M. GOODWIN,

Special Agent, G. L. O. [2010—1680]

Q. I will ask you whether or not you signed and swore to that affidavit? A. I refuse to answer.

Q. On what ground?

A. On the grounds that I have heretofore stated.

Q. Well, what are they?

A. I claim my privilege.

Q. What is your privilege?

A. I am under an indictment in these same cases before the court, and I claim my privilege.

Q. Do you know what you are under indictment for?

A. I am under indictment for perjury, I suppose.

Q. In making your sworn statement in connection with this claim?

A. I refuse to answer any further questions.

Q. On what grounds do you refuse to answer any questions? A. I have stated it once.

Q. Now, state the grounds on which you decline to answer the question.

A. I said I am under an indictment in the same case as is up here, and therefore I claim my privilege

(Testimony of Rowland A. Lambdin.)

and refuse to answer any questions.

Q. And are you swearing that you are under indictment, Mr. Lambdin?

A. As far as I know I am under an indictment, yes, sir. I have no reason to think otherwise.

Q. Are you under bond?

A. Well, I don't know as I am.

Q. You never have been under bond?

A. Not that I know of.

Mr. GORDON.—I will ask to have that matter certified to the court. Will you be down here tomorrow morning at ten o'clock, Mr. Lambdin?

WITNESS.—Yes, sir. [2011—1681]

**[Testimony of Francis M. Goodwin, for
Complainant (Recalled).]**

FRANCIS M. GOODWIN, a witness heretofore called by the complainant, and duly sworn, being recalled by the complainant, testified as follows. to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Goodwin, I failed to ask you whether or not you are still in the Government employ?

A. I am not. Q. You are not?

A. I am not.

Q. And in what are you engaged—in the practice of your profession?

A. In the practice of law, yes, sir.

Q. In Spokane? A. In Spokane, yes, sir.

Q. Mr. Goodwin, do you know Mrs. Frances A. Justice, now Mrs. Clausen?

(Testimony of Francis M. Goodwin.)

A. I know Mrs. Frances A. Justice; I don't know her present name.

Q. Do you remember of going to see her relative to her transactions in taking up a timber claim?

A. I do.

Q. And do you remember the occasion of getting an affidavit from her relative to her timber claim?

A. I do.

Q. And I will ask you whether Mr. Samuel F. O'Fallon was with you at that time?

A. He was.

Q. And where did you go to see her?

A. At her home in Clarkston, Washington.

Q. I will ask you, Mr. Goodwin, if you went to Mrs. Justice's home in company with Mr. O'Fallon and asked her if she was alone, and [2012—1682] said that you were sent there by the Government to get a deposition from her, and whether or not you looked through all the rooms in the house to see whether there was anyone in the house that could hear what you said? A. I did not.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and an attempt to contradict or impeach his own witness.

WITNESS.—I did not.

Mr. GORDON.—Q. Did Mr. O'Fallon?

A. He did not.

Q. Were you present all the time with Mr. O'Fallon while you were there? A. I was.

Q. Did Mr. O'Fallon say to Mrs. Justice: "Look out, Mrs. Justice, you are evading the truth"; "We

(Testimony of Francis M. Goodwin.)

know just how that was, and you are not telling it as it was''?

A. I don't recall any such conversation.

Q. And then did either of you state how the transaction was carried on? A. We did not.

Q. I will ask you if either you or Mr. O'Fallon threatened Mrs. Justice in any way?

A. We did not.

Q. Did you intimidate her or attempt to intimidate her in any way? A. We did not.

Q. I show you a paper marked Plaintiff's Exhibit 35, and which purports to be an affidavit made by Frances A. Justice before Francis M. Goodwin, Special Agent of the general land office, and ask you to look at that and state whether or not that is Mrs. Justice's signature to that paper, and whether or not it was sworn to before you in the [2013—1683] presence of Mr. O'Fallon.

A. This is her signature, and it was sworn to before me in the presence of Mr. O'Fallon.

Q. Now, will you state the circumstances of obtaining that affidavit?

Mr. TANNAHILL.—We object to that as immaterial and irrelevant.

WITNESS.—Mr. O'Fallon and I had called at Mrs. Justice's home several times and not found her in. One afternoon we went over there and found her on her front porch, and explained to her who we were, and she said she understood that we had been over there to see her and she was expecting us to come again. We told her what we wanted, and she

(Testimony of Francis M. Goodwin.)

said that she had seen in the newspapers that these cases were being investigated, and then we proceeded to ask her questions as to her timber and stone entry, which she answered. After we had gone over the matter fully we asked her if she was willing to have a statement made in writing to that effect. She said she was. We then went into her house, and I prepared this statement, and she signed it.

Mr. GORDON.—Q. Did she read it over before she signed it?

A. No; I think I read it over to her. She was looking over as I read it.

Q. Did she sign it voluntarily? A. She did.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. And are the statements contained here the exact statements that she made to you, Mr. Goodwin? A. They are.

Q. Is this the only statement that you ever took from Mrs. Justice that she signed?

A. I don't recall any other. I think we had statements of hers taken at Moscow, in one of the trials, which she read over afterwards [2014—1684] with us at Moscow, but none that we ever wrote down ourselves.

Q. I will ask you to read in there, Mr. Goodwin, "The location fee I paid William Dwyer was returned to me by Mr. Dwyer. I did not give him a note for the money." Did Mrs. Justice make that statement to you, that "The location fee I paid William Dwyer was returned to me by Mr. Dwyer"?

(Testimony of Francis M. Goodwin.)

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and an attempt to impeach his own witness.

WITNESS.—She did.

Mr. GORDON.—Q. Read that, will you, “I signed what I understood was a contract, that is, an instrument in writing, conveying the land I proved up on to the Kester & Kettenbach in the bank, the same day I made final proof and after making final proof. Just after I signed the instrument in writing spoken of William Dwyer handed me \$150.00 in cash.” Now, stop right there. Did she tell you that she had conveyed the land to Kester and Kettenbach, as stated in there? A. She did.

Q. Now, then, this sentence in the affidavit, later on, after the other: “Before going out to examine the land I had a talk with Mr. Dwyer and told him I would take a claim if I knew where I could sell it when I proved up. He said he thought he knew where he could find a purchaser, and he told me these parties would not pay over \$150.00 and the expenses of the location. I went up to examine the claim with the intention of selling or disposing of my claim to the purchaser spoken of by Mr. Dwyer.” Did she make that statement to you and Mr. O’Fallon?

A. She did.

Q. (Continuing:) “I understood the instrument in writing above spoken of was a contract or agreement that I would execute a deed for the land when I should get my patent, as I did not think I could execute a deed until I received my patent.” Did

(Testimony of Francis M. Goodwin.)

Mrs. Justice make that statement [2015—1685] to you and Mr. O'Fallon? A. She did.

Q. Were you in the room when Edward Lewis was making a statement—Edward M. Lewis?

A. Yes, I think I was.

Q. Did you threaten any witness, Mr. Goodwin? Did you threaten him with the penitentiary, or a little place across the way, if he didn't tell matters the way you wanted him to?

A. I certainly did not.

Q. Did you hear anybody else make any such a threat? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. You was in the room a good deal of the time when O'Fallon was talking to the witnesses, wasn't you? A. I was.

Q. Now, did you say you never heard O'Fallon threaten any witness?

A. I never heard him threaten a witness.

Q. You never heard him threaten to take them before the grand jury and indict them?

A. No. I have heard him say he would take them before the grand jury, but I never heard him say he would indict them.

Q. Now, didn't you hear him tell Hy. Lewis, in the presence of Ed. Lewis, that there was a little room over here where they would take care of him if he didn't answer the questions? A. No, sir.

Q. You never heard that at all? A. No, sir.

Q. Now, in making your examination, in taking

(Testimony of Francis M. Goodwin.)

statements of different witnesses you usually told them how you heard the transaction occurred, didn't you? [2016—1686] A. No, sir.

Q. You didn't do that? A. No, sir.

Q. Now, didn't you hear Mr. O'Fallon tell Mrs. Justice that she was evading the truth on several different occasions?

A. I might have heard him say that after this original statement was taken at Moscow.

Q. Well, didn't you hear him tell her that at the time this original statement was taken, and before that? A. I did not.

Q. But you do remember hearing him tell her that she was evading the truth, over at Moscow?

A. I think he made some such statement as that to her on one or two occasions, that she was seeking to evade the truth.

Q. And he tried to pin her down to that affidavit?

A. I don't know what his object was.

Q. Didn't you hear him tell her a number of times that she was evading the truth?

A. No, sir, I didn't.

Q. And you didn't hear him tell her how it was that the transaction had occurred? A. No.

Q. Now, who was with Mrs. Justice at the time you and O'Fallon went to her home?

A. No one that I know of.

Q. When did you find out that no one was there?

A. After we had seen her.

Q. How did you find it out then?

A. Simply because no one appeared where we

(Testimony of Francis M. Goodwin.)

were, and I saw no one in the house.

Q. You and O'Fallon didn't look in any of the rooms?

A. No, sir, only the one room where we took the statement, that was all. [2017—1687]

Q. And you looked in the room, did you?

A. We couldn't help looking in it; we were occupying it.

Q. Now, you say that Lambdin told you that if he didn't get some money from the defendants that evening that he would give you a statement; is that right? A. Yes, sir.

Q. Which one of the defendants did he say he was expecting that money from?

A. I think it was William F. Kettenbach.

Q. Did he tell you how much money he had demanded of him? A. He did.

Q. How much?

A. I don't recall the amount. I think it was \$75.00, but I am not sure.

Q. Well, did he tell you that he had written to tell them that if they didn't give him that money that he would make a statement for you and O'Fallon?

A. He told us that afterwards; he didn't at that time.

Q. And did he tell you that he had drawn up a complaint, or had Clay McNamee draw up a complaint, and mail it to them, and tell them that that complaint would be filed in the District Court if they didn't come through with so much money?

A. Not at that time. He told us that after he had

(Testimony of Francis M. Goodwin.)

made the statement, and also exhibited to us a letter he had sent to Mr. Kettenbach, after we had taken his statement.

Q. But he told you that if they didn't come through with that money before night, he would then make that statement?

A. His language was, as near as I can remember it, that he was expecting some money from Mr. William F. Kettenbach, and that if he didn't receive it at the time he was expecting it he would come back and make a complete statement, and he came in and told us that he hadn't received the money and was ready to make the statement.

An adjournment was thereupon taken until ten o'clock to-morrow morning. [2018—1688]

On Thursday, September 15th, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of C. W. Robnett, for Complainant
(Recalled).]**

C. W. ROBNETT, recalled for further direct examination, testified as follows:

Q. Mr. Robnett, do you know Mr. Fred Emory?

A. I do.

Q. And do you know Mr. C. W. Colby?

A. Yes, sir.

Q. Do you know whether they were connected in business in any way? A. They were.

Q. Were you at any time at a conference or conversation in which either of these parties and the defendants conversed relative to any timber transactions? A. I was.

(Testimony of C. W. Robnett.)

Q. Now, when was that?

A. Why, along in the latter part of the spring or early summer of 1903.

Q. Now, state what you can relative to that conversation, where it was and who were the parties to it.

A. The first conversation took place between Mr. Colby and Mr. Kester.

Q. Where was this?

A. This was in the main body of the bank, the main body of the working room of the bank, at Mr. Kester's desk. Mr. Colby came into Mr. Kettenbach's private office and around to Mr. Kester's desk, where he was sitting, and pulled a chair up there and sat down right beside him. He says, "George, I come in to talk to you in regards to the timber matters." He says, "Fred Emory last winter cruised out some claims in 39—3, and we located six men on them this spring, and [2019—1689] we are to furnish them with money and all expenses to prove up, and are to pay them \$200.00 for their right. Now, we have fallen down on being able to get this money, and wanted to know if you can go ahead and take this up under the same arrangement and take care of these parties."

Q. What were the entrymen to do? Was anything said about that?

A. The entrymen were to go ahead and prove up and deed the claims over to Colby and Emory for \$200.00 each.

Q. Was anything said about, if Kester furnished

(Testimony of C. W. Robnett.)

the money, what was to be done with the claims?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The claims were to be deeded over, Mr. Colby said, if Mr. Kester and Kettenbach went in and took care of the entrymen under the same conditions and terms that they had with them, that they would deed the claims over to them after proof, and they were to receive \$200.00 per claim. Mr. Kester says, “Well, I will take it up with Mr. Kettenbach when he comes in and will let you know later.” He says—

Q. Wait a minute. Will you try to repeat what you said about what Mr. Colby told him about having entered some people on claims the preceding winter, told Kester?

A. He says, “George, Fred Emory cruised out some timber last winter in 39—3, and we have located six parties on that timber with the understanding that we were to take care of them and pay their expenses and give them \$200.00, and them deed the claims over to us after proof.”

Q. And was anything said whether or not there was any relationship between these entrymen and Emory and Colby?

Mr. TANNAHILL.—We object to that as leading and suggestive, and prompting the witness from the testimony given in the trial of Kester, Kettenbach and Dwyer, which Mr. Gordon is now holding in his hand and [2020—1690] referring to in asking the questions of the witness. I don’t think it is fair, Mr. Gordon.

(Testimony of C. W. Robnett.)

Mr. GORDON.—I submit that that isn't leading.

Mr. TANNAHILL.—It certainly is; it is simply calling his attention to some parts of the evidence that he gave in a criminal case, and that isn't fair.

Mr. GORDON.—Answer the question.

A. Nothing more than the understanding and—

Q. No, I don't mean that. I mean did he say who these people were, without giving their names?

Mr. TANNAHILL.—The same objection.

A. No; he stated, there were six men; I don't know at that time whether he stated who they were or not, but at a conversation later on he made that—

Mr. GORDON.—Q. Do you know whether or not anything was said as to by whom these entrymen had been employed?

Mr. TANNAHILL.—We object to that on the same ground; it is an effort to lead the witness and in fact tell the witness what to swear to, and leading and suggestive.

Mr. GORDON.—Answer the question.

WITNESS.—What was the question?

The last question was thereupon repeated by the Reporter.

A. They had been obtained by Mr. Emory.

Mr. GORDON.—Q. I don't mean to take up timber claims. Do you know where they were working?

Mr. TANNAHILL.—The same objection.

A. Yes, some of them had been working for them and they knew they were all right—working for them in the timber. [2021—1691]

Mr. GORDON.—Q. Now, what else was said in

(Testimony of C. W. Robnett.)

that conversation?

A. Mr. Kester told him he would take the matter up with Mr. Kettenbach as soon as he came in, and would let him know just what they would do, and he also asked him, "Are you sure that Fred knows all about these claims?" And Mr. Colby says, "Yes, he does, and you know that Fred is well posted on timber," and George says, "Yes," and he says, "You come in this evening or tomorrow and I will let you know what we will do; I will take it up with Mr. Kettenbach." When Mr. Kettenbach came in Mr. Kester went into his office and says, "Will, Mr. Colby was in here to see me about us taking up six claims in 39—3 that was located by Fred Emory and cruised out by him last winter which he claims are all right. They are to pay the entrymen \$200.00 a claim. Now, what do you think about it? Do you think we want to go into that township and take up those six claims?"

Q. Go ahead.

A. And Will asked George about what the claims would run, and George told him that he thought they would go somewhere in the neighborhood of between two and three million; it was second growth timber in there. But, he says, "We will take the matter up with Mr. Dwyer and see what he thinks about that timber, and also we will have Mr. Emory come down and ask him about it, and Mr. Colby will be in this afternoon or to-morrow morning to get our answer." And Will said, "Well, if you think it is all right and the timber is all right, I am perfectly willing for us

(Testimony of C. W. Robnett.)

to go ahead with it.”

Q. Do you know anything else further relative to those transactions?

A. I think it was the next morning that Mr. Colby and Mr. Emory came into the office, and they talked the matter over, and Mr. Emory told him that he checked those claims over and he knew they were the [2022—1692] best claims in that whole township that was subject to filing. And Mr. Kester told Mr. Colby that they would go ahead and furnish the money for the proof and take the claims under the same conditions that they had with the entrymen, to pay them \$200.00 for their right.

Q. Now, do you know of anything further that was said at that conversation?

A. The names of the entrymen was spoken of.

Q. By whom?

A. By Mr. Kettenbach; he asked either Mr. Colby or Mr. Emery the names of the entrymen and he gave them to him.

Q. Do you remember anything else that was said at that time?

A. No, not at present, with the exception that when the time came for them to come in, Mr. Kester told Mr. Colby to come in when the time came for the proof and he would give them the money.

Q. State anything else that you know, now, relative to that transaction.

A. Well, at the time for the proof Mr. Colby came into the office, Mr. Will Kettenbach's private office,

(Testimony of C. W. Robnett.)

and had a talk with George Kester, and he called me in—

Mr. TANNAHILL.—The defendants desire to interpose an objection as to any conversations had between any of these parties relative to the final proof, or the making of final proof, and would ask that this objection go to all this line of testimony without the necessity of repeating it after each question.

The SPECIAL EXAMINER.—Yes; that may be understood.

WITNESS.— —and told me to bring in some money—I think it was \$2,400.00 or \$2,500.00 in currency—and make a cash item in the cash for the money, which I did.

Q. Now, when was this?

A. It was the time these entrymen were to make their proof. [2023—1693]

Q. Who was present at that time?

A. Mr. Colby, Mr. Kester and myself.

Q. Where was this?

A. In Mr. Kettenbach's private office.

Q. Was anything said at any of these conversations as to when the arrangement you have referred to was made with the entrymen?

A. Prior to the time of the filing. Mr. Colby stated that Mr. Emory cruised the timber out and then got these parties to file under that agreement.

Q. Did you see any one about the bank relative to these transactions, the day of final proof, other than those you have named?

(Testimony of C. W. Robnett.)

A. Yes, there was two of the entrymen was outside on the sidewalk of Mr. Kettenbach's private office. I think it was Mr. Evans, and the other party I don't recall just now.

Q. Did you say a while ago that in one of these conversations the names of the entrymen were given?

A. Yes, sir.

Q. Did you name them?

A. No, I didn't name them.

Q. At which conversation was it?

A. It was in Mr. Kettenbach's private office, at the time that Fred Emory and Mr. Colby and Mr. Kettenbach and Mr. Kester were having a talk.

Q. And that was the second conversation?

A. That was the third,—no, it was the second conversation.

Q. Who were those entrymen that were mentioned?

A. Why, Mr. Evans and Lon. Bishop, Mr. Chute.

Q. Do you know his first name?

A. No. And Mr. Smith.

Q. Do you know his first name?

A. Charles Smith. [2024—1694]

Q. Who else? A. And Mr. Dent.

Q. What was his first name?

A. I don't know; I don't recall the other entrymen.

Q. Mr. Robnett, do you know of any instances in which either Kester or Kettenbach furnished any entryman money for any part of the expenses in taking up a claim, other than you have related?

A. Yes, they—well, I don't know whether—they

(Testimony of C. W. Robnett.)

furnished most of the expenses for almost every one of them that came down to that line-up. I don't know whether you mean any individual entry outside of that line-up. I don't know just what you mean.

Q. Well, do you know of any money that was furnished to any of the entrymen for the payment of location fees?

A. Yes, there was; you take the Jackson O'Keefe entrymen there, money was handed out to one and passed around back to Bill Dwyer and then out again.

Q. What was that transaction?

A. That was a hundred dollar bill.

Q. Now, what do you know about that hundred dollar bill?

A. I know it was kept there in the cash for quite a while for that purpose.

Q. For what purpose was it kept?

A. To be handed out to the entrymen and around and to be handed to Mr. Dwyer, and then brought back to the bank to be utilized when it was needed, just for show.

Q. Now, do you know of any conversation ever had in the bank relative to that hundred dollar bill?

A. Yes, there was a conversation in the bank took place between Mr. Dwyer, and I believe between Mr. Kettenbach, either Mr. Kettenbach or Mr. Kester, in regards to the hundred dollar bill, asking him about [2025—1695] how he got his location fee paid. He says, "Well, they paid, a certain number, and it is back in the bank to-night."

Q. Do you know how long that hundred dollar bill

(Testimony of C. W. Robnett.)

was used for that purpose? A. Several months.

Q. Now, you spoke of the Mary Harris claim yesterday that you called your claim? A. Yes.

Q. And you had tried to arrange with Mr. Goldsmith to leave that out of the State selections?

A. Yes, sir.

Q. I will ask you if you remember whether that claim was ever contested?

A. Yes; it was in the first list of claims that was filed at the request of Mr. Goldsmith.

Q. I asked you if you remember whether there was a contest filed against that claim.

A. You mean by the State? A. By anybody.

A. Well, no; the contest,—Mrs. Harris and myself had offered our homestead filings, and they were rejected at this time, but later on Ralph Chapman contested Mrs. Harris'.

Q. Were you interested in that?

A. I wasn't interested in the contest, no; I withdrew.

Q. Why did you withdraw?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

A. One of the reasons I got out of it was that Mr. Kester told me he thought I had better drop it on account it was going to bring up a certain amount of notoriety, and Mr. O'Fallon was there, and it would create an investigation of the timber matters and would bring them into [2026—1696] it, and he thought it was best to drop out, and I did so.

(Testimony of C. W. Robnett.)

Q. Did you ever talk to anybody else about that contest?

A. I talked to Mr. Kettenbach, and told him what I was going to do and he said he thought it would be a good thing, too. He wanted to know if I had spoken to Mr. Kester about it, and I told him yes, that George had advised me to, too, and he said "All right, go ahead and drop out and keep out of any trouble."

Q. Do you know a Carrie D. Maris, now Mrs. Rexford? A. I do.

Q. I will ask you if you ever had any negotiations or arrangements with her relative to taking up a timber claim? A. I did.

Q. Now, state what it was.

A. I went into the,—she was working in Mr. Volmer's Baum's store, and I went in and seen her and asked her if she wanted to take up a timber claim, and she said she did, but had no money or means of carrying it through, and I told her that I would tend to that if she wanted to take up a timber claim, and I would see that she got a good claim, and she said, "All right," and I says, "When can you go into the timber," and she says, "Almost any time, but I would like to have it along in about five or six days from that time," and I told her that could be arranged, if she wanted to go, and I told her I would pay all the expenses and the location fee, and that when the claim was proved up on and sold that we would divide whatever the profits was in the claim.

(Testimony of C. W. Robnett.)

Q. Was that all?

A. So I seen Charlie Jansen, and he—

Q. Wait a minute. Before you get to that, when you told her that, what did Miss Maris say?

A. She said that was all right; said it was perfectly satisfactory to her. [2027—1697]

Q. Now, what was said about selling this property?

A. That I was to handle it and sell it and pull out one-half of the profits, whatever was made out of the claim, each one of us would take; we would divide the profits equal, after deducting all expenses.

Q. Now, tell all that you can remember about that transaction.

A. Well, I made arrangements with Charlie Jansen to take her up close to Pierce and locate her on a claim, and she came back and I gave her the money for filing, and she filed, and I also gave her the money for final proof, and then I had her sign a mortgage to Mrs. Sullivan, for the money for the proof, \$400.00 or \$500.00, I have forgotten now which it was; then I had a deal on to sell the claim to Joe Molloy, but Mr. Kester said he wanted the claim, and I told him all right, and sold it to Mr. Kester for \$1,600.00.

Q. Did Mr. Kester know anything about the arrangements you had with Miss Maris?

A. Yes, he knew all about that.

Q. How do you know that?

A. From conversations relative to the timber transactions.

Q. And did you let him have that in accordance with your arrangements you had with him?

(Testimony of C. W. Robnett.)

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for the conclusion of the witness and not a statement of a fact.

A. Yes.

Mr. GORDON.—Q. Do you remember how much you gave Mrs. Rexford for her share of the profits of this?

A. Why, I advanced her money from time to time, and so the last time she asked me for money she said if I would give her that, that she would consider that a cancellation of all her rights to the claim. It went to my mind that I gave her somewheres around \$170.00, all told. [2028—1698]

Q. Was that before you sold or after you sold?

A. That was before I sold.

Q. Do you know a John H. Little? A. I do.

Q. Did you have any negotiations with him relative to taking up a timber claim? A. I did.

Q. Now, state what that was.

A. We had a number of claims up there—

Q. Where?

A. Township 39—3, that Mr. Knight and Mr. Benton had cruised out.

Q. Who is Mr. Benton? What is his name?

A. W. B.

Q. And is he the son of Joel Benton?

A. Joel H. Benton; yes.

Q. Are they any relation to William F. Kettenbach?

A. Joel H. Benton is an uncle of Mr. Kettenbach, and W. B. Benton is a son of Joel H. Benton, making

(Testimony of C. W. Robnett.)

him a cousin of W. F. Kettenbach.

Q. Was the relationship through Mr. Kettenbach or Mrs. Kettenbach? A. Mrs. Kettenbach.

Q. Now, state the transactions with Mr. Little.

A. I seen Mr. Little and told him that he had a number of claims up there that I was locating people on, and wanted to know if he didn't want to take up a claim, and he said that he did, but he hadn't the money to go ahead, and I told him I would arrange for that, and also to pay the expenses, and that I had deals on for the disposing of the timber, and that I could get him from \$150.00 to \$200.00 out of the claim.

Q. Now, when was this you had this conversation with him relative to entering the claim? [2029—1699] A. That was along in the spring of 1903.

Q. I say, relative to the time of entering the claim.

A. It was prior to the time he filed.

Q. Did he say anything about it at that time?

A. He said it was all right; that as soon as he could get away from the store, when there was a crowd going up, he would go up.

Q. State all that happened.

A. He went on up to the timber, came back and filed, and gave his note for the location fee.

Q. How much was that?

A. A hundred and twenty-five dollars, either \$125.00 or \$150.00. There was two different location fees that was charged there at different times.

Q. Now, do you know who furnished the expenses going to the timber, and for the filing for Mr. Little?

(Testimony of C. W. Robnett.)

A. My recollection is that that was furnished by Curtis Thatcher at that time, as he agreed to make a number of loans on claims, ten in number.

Q. Now, before you get to that, you said that you told Mr. Little that you had a deal on that you could sell his claim. Was anything said at that time as to what he would get for it, or what was the arrangement relative to that, if any?

A. Why, that I would get him either \$200.00 or \$250.00 for his right, that would be what he would make out of it if the deal went through. If it didn't, I thought there was other deals whereby I thought I could handle it and get him that amount of money.

Q. Did you get any money from Curtis Thatcher for Mr. Little?

A. Yes, he advanced the money for the location fee, and advanced the money for a number of them.

Q. I am speaking now about the Little claim.

A. I couldn't say positively, but I think he did, that he advanced [2030—1700] the money to go up into the timber and also for the location fee; I know he advanced the money for the location fee, took up Johnny Little's note.

Q. As I understood, you furnished the money for him, did you not? A. Yes.

Q. And you took a mortgage. Do you remember to whom that mortgage was?

A. Why, the mortgage was made to me.

Q. And do you remember what you did with the mortgage and the note secured by it?

A. I turned the mortgage over to Mr. Kettenbach

(Testimony of C. W. Robnett.)

and assigned the note to him without recourse.

Q. When was that, relative to the time that you took the note? A. The same day.

Q. When was the note taken?

A. Right after proof.

Q. Right after final proof? A. Yes, final proof.

Q. Now, what became of that claim, do you know?

A. It was finally deeded to Mr. Kettenbach.

Q. Do you remember the transaction in connection with that, the conversation relative to it?

A. Why, the deals failed to go through that I had at the time of the location, and, of course, the mortgage came due, and Mr. Kettenbach told Mr. Little that he would have to either pay the mortgage or deed the claim, and he deeded the claim.

Q. Now, did either Mr. Kettenbach or Mr. Kester know of the arrangement that you had with Mr. Little? A. They did.

Q. How did they know that?

A. From conversations with both of them.
[2031—1701]

Q. Who had the conversations with them?

A. I had the conversations with both of them, and I told Mr. Kettenbach about the condition of the claims at the time he agreed to take them over.

Q. Do you know, or did you know, a Wren Pierce?

A. Yes, sir.

Q. Who was he?

A. He was an entryman that filed on a claim in 39-3.

Q. What was his business?

(Testimony of C. W. Robnett.)

A. He was either a carpenter or a painter, I don't know which.

Q. Was he just a transient there in Lewiston?

A. Yes; he went away right after he made his proof.

Q. How long had he been there, do you know?

A. Something like six months.

Q. Did you have any transaction with him relative to a timber claim? A. I did.

Q. Now, state what it was.

A. He was brought to me by Mr. Varney, Arthur Varney, and I explained to him the conditions under which I could furnish him a claim to file on, and he stated that he would be willing to go ahead and file on a claim for \$200.00 for his right, and I told him I had some deals on at that time, and explained the details.

Q. You said that you explained to him the conditions under which you would furnish him a claim. You didn't say what the conditions were.

A. The conditions were that he was to go ahead and go up and see the claim, and file, and prove up on it, and I was to furnish the money for him.

Q. Furnish what money for him?

A. The money necessary to pay expenses and final proof, and then to sell the claim for him, and give him \$200.00. He went ahead and filed on the claim, proved up on it, and the day he made proof Mr. [2032—1702] Kettenbach bought the claim.

Q. Do you remember whether you took a mortgage on that claim or not?

(Testimony of C. W. Robnett.)

A. No; he sold out. There was three of them that was sold outright, and he was one of them.

Q. Who were the other two?

A. Morrison and—

Q. Now, do you know whether or not you are mistaken in that statement that no mortgage was taken from Wren Pierce?

A. No; I don't think so; I don't know—

Q. Do you remember where you got the money for him to pay his location fee?

A. Why, he give his note, and I took it over and turned it over to Curtis Thatcher, and he advanced the money.

Q. Do you remember where you got the money to make final proof with?

A. I took it from the bank there, and after the proof the claim was,—instead of him giving a mortgage he deeded it, that is my recollection. Now, there was three out of eleven that deeded the claims without giving a mortgage.

Q. There was two out of three—

A. There was two then and one later on, that sold later on, without giving mortgages; Morrison was one of them.

Q. George Morrison?

A. George Morrison was one of them, and it is in my mind that Wren Pierce is the other.

Q. Who were the three that you refer to? Do you refer to Clute? Was he one of them? A. No.

Q. You say there was two out of three—

A. There was eleven claims all told, and certain

(Testimony of C. W. Robnett.)

ones of them gave [2033—1703] mortgages, and the other two deeded direct and Mr. Kettenbach paid them \$200.00 a claim.

Q. And the others gave mortgages?

A. Yes; George W. Morrison and Wren Pierce; that is my recollection.

Q. And was Clute of that bunch?

A. No, Clute wasn't in that bunch; it had nothing to do with Clute.

Q. Did you negotiate the sale to Mr. Kettenbach?

A. I did.

Q. And did he know about your arrangement with— A. Yes, sir.

Q. — Pierce? A. Yes.

Q. How do you know that?

A. I told him all about it.

Q. Do you know Benjamin F. Bashor?

A. I do.

Q. Do you know whether or not he took up a timber claim? A. He did.

Q. Do you know,—state what you know about his taking up a timber claim.

A. Why, he was the assessor of Nez Perce County, and I called him up over the phone and I told him the next time he came down town to come into the bank to see me, and he came into the bank, and I told him that if he wanted to take up a timber claim that I could furnish him one, and he said he didn't have the money, and I told him I would go ahead and arrange for the money for the final proof, and he says, "All right then I will go ahead and take a claim." He

(Testimony of C. W. Robnett.)

wanted to know how much he would get out of it, and I told him I would get him \$200.00 or \$250.00.

Q. Was anything further said at that time as to what was to be done with the claim?

A. Why, I was to have the selling of the claim, and all above the [2034—1704] \$250.00, whatever I sold the claim for, I was to have; he would sell it for the \$200.00 or \$250.00.

Q. That was the arrangement you had with him prior to his ever going to view the claim? A. Yes.

Q. Did he accept the proposition?

A. He accepted it.

Q. What happened next?

A. He went up into the timber and came back and filed.

Q. Who furnished him the money, if you remember?

A. I think he furnished his own money to go up to see the claim.

Q. Who furnished the money for the location?

A. Why, he gave his note for it.

Q. Who furnished the final proof money?

A. Mr. Kettenbach.

Q. Was a note taken for that? A. There was.

Q. Do you know whether a mortgage was given or not? A. There was.

Q. Do you know to whom the mortgage ran?

A. To me.

Q. And the note to you also? A. Yes.

Q. Have you any remembrance of what the amount of that note was? A. \$725.00, I think.

(Testimony of C. W. Robnett.)

Q. Was it one note or two notes?

A. That was one note.

Q. When was that note given, do you remember?

A. Right after final proof.

Q. What did you do with that note? [2035—
1705]

A. I took it in and endorsed it over to Mr. Kettenbach.

Q. The same day you got it? A. Yes.

Q. Were you liable on that note at all?

A. No; without recourse.

Q. Was the mortgage assigned? A. It wasn't.

Q. Were any of these mortgages that you took in your name and transferred the notes to Mr. Kettenbach, were the mortgages assigned? A. No, sir.

Q. Did you negotiate the sale of this land?

A. I did.

Q. Now, state what you remember about that.

A. It was some time afterwards, and I seen Mr. Bashor,—I wrote him,—he was up at Peck then, and I wrote him to come down and see what he would do in regards to his claim, and I made him an offer of so much money for Mr. Kettenbach and he accepted it, and deeded the claim over to Mr. Kettenbach.

Q. Do you know Mr. Francis M. Long?

A. I do.

Q. I will ask you whether or not Mr. Kettenbach knew the conditions under which you were dealing with Mr. Bashor? A. He did.

Q. How did he know that?

A. By my telling him.

(Testimony of C. W. Robnett.)

Q. Did you tell him,—when did you tell him this?

A. Why, at the time of the location, and also at the time I spoke to him about loaning the money.

Q. For final proof?

A. For final proof. [2036—1706]

Q. Now, state what you know about Francis M. Long and who he is.

A. Francis M. Long lived at Lewiston at that time; he lives now out in the country.

Q. Was he an old man or a young man?

A. Well, I don't know the given names of the old gentleman or the son; there was two boys and the old gentleman; I don't know which is which.

Q. There is Francis M. Long, John H. Long, and Benjamin F. Long. Do you know which is the father and which the sons?

A. Mr. John Long is one of the boys, and the other boy and the old gentleman I don't know which—

Q. Did you have any arrangement with either one or all of these persons I have named, Francis M. Long, John H. Long, and Benjamin F. Long, relative to their taking up a timber claim? A. I did.

Q. Where was it and when was it?

A. I first spoke to John Long on the street and told him that I had timber claims to locate people on, and that if he wanted to go ahead and file that I could get him \$200.00 out of his claim.

Q. That was John H. Long, was it?

A. Yes; and he says, "All right, I will think it over, and I think my father and brother want to locate also."

(Testimony of C. W. Robnett.)

Q. Was anything said about the expenses at that time?

A. No; he said he would speak to his father and brother, and they would all come down to the bank. The three of them came down to the bank to see me one afternoon.

Q. State what happened there. That was his father and brother, Benjamin F. and F. M. Long?

A. Yes.

Q. You don't know which was father and brother from the names?

A. No, not from the names. [2037—1707]

Q. All right. Now, what happened then?

A. We discussed the—

Q. You say they came to the bank?

A. They came to the bank and I went over the whole matter with them, and told them where the timber was, and that the locators would take them out and show them the claims, and when they came back they could go to the land office and file, and after they filed they were to give a location fee, or give a note for it, and when the time of final proof came, this deal was holding fire for some time, why, they could give me a mortgage, the arrangements had been made for the money to be advanced to pay for the location fee and the proof money, and I would get them \$200.00 out of their claims.

Q. What did they say?

A. They said it was satisfactory, and they went up to the timber and came back and filed, proved up, and made a mortgage, gave mortgages to me for

(Testimony of C. W. Robnett.)

\$725.00 or \$750.00, and I endorsed the notes over to Mr. Kettenbach.

Q. When was that, that you endorsed the notes over?

A. The same day I took the mortgages.

Q. Did Mr. Kettenbach know anything about the arrangement you had with these entrymen before they filed on the land? A. He did.

Q. When did he learn that?

A. The same time that I approached him to make a loan on the timber claims, and also at other conversations we had relative to the timber that I was locating.

Q. Did you afterwards negotiate a sale of these three claims with Mr. William F. Kettenbach?

A. Why, I assisted in getting the boys to come into the bank and give Mr. Kettenbach a deed.
[2038—1708]

Q. Were you liable on the note that you endorsed to Mr. Kettenbach?

A. No, sir; without recourse. I endorsed all those notes without recourse.

Q. Did you assign the mortgages that the Longs gave you? A. No, sir.

Q. Do you know Bertsel H. Ferris? A. I do.

Q. Where did he reside in—

A. Lewiston, Idaho.

Q. Do you know when he first came to Lewiston, —as well as you can remember?

A. Why, he had been there some little time; I don't know just how long.

(Testimony of C. W. Robnett.)

Q. Well, now, did you have any transaction with him relative to taking up a timber claim?

A. I did.

Q. Before he took up his claim? A. I did.

Q. I wish you would state what—

A. I approached him on the street and asked him if he wanted to take up a timber claim, and he said he did, but he had no money to pay the expenses and filing on the land; I told him I had arrangements made whereby I could get the money and I would sell the claim later for him and get him a couple of hundred dollars out of it.

Q. Was anything said about what he was to do with his claim, at that time?

A. He was to deed it over to whoever I negotiated a sale with, and he was to receive \$200.00 for his right.

Q. I will ask you whether or not he accepted that proposition? A. He did.

Q. Did you furnish him the money for his expenses, and so forth? [2039—1709]

A. I wouldn't be positive whether I furnished the money for his expenses to the timber; I took his note for the location.

Q. And did you furnish him his final proof money?

A. I did, and took a note and a mortgage.

Q. When did you take this note and mortgage?

A. The day of his proof.

Q. Did you take the final receipts of these persons you have named also?

(Testimony of C. W. Robnett.)

A. I did, yes, sir.

Q. At the same time you took the notes?

A. Yes, sir.

Q. What did you do with this note and receiver's receipt of Ferris'?

A. I turned it over to Mr. Kettenbach.

Q. Was the note endorsed?

A. I endorsed it without recourse.

Q. Did you assign the mortgage?

A. I didn't; I surrendered the mortgage, I didn't assign it.

Q. Now, did Mr. William F. Kettenbach know the arrangements you had with Mr. Ferris relative to taking up this claim? A. He did.

Q. Did you tell him about them? A. Yes, sir.

Q. When?

A. At the same time I told him about the others.

Q. What do you mean by the same time you told him about the others?

A. When I made arrangements for all the loans, when I made arrangements to buy claims up, at that time, to advance the money.

Q. And did you negotiate the transfer of Mr. Ferris' claim? A. To Mr. Kettenbach?

Q. Yes. [2040—1710] A. Yes, sir.

Q. Do you know how much Ferris got, over and above what the expenses were?

A. No, I don't remember.

Q. You know George Ray Robinson?

A. I do. [2041—1711]

Q. Do you know George Ray Robinson?

(Testimony of C. W. Robnett.)

A. I do.

Q. Did you have any transaction with him relative to his taking up a timber claim? A. I did.

Q. Will you state how it came about, and what happened?

A. Why, one evening Mr. Ferris brought him up to the house, and I explained to him the claims we had to locate in 39-3, and the deals we had on, and that I could get him a couple of hundred dollars out of his claim, and all the money would be advanced.

Q. For what?

A. For the location fee, and for the final proof, and after final proof why he would give a mortgage until the claim could be sold.

Q. And what was he to do with the claim?

A. He was to deed it to whoever I designated when I made a sale of it.

Q. Now, were you talking to Mr. Ferris or Mr. Robinson?

A. I was talking to both of them at the same time.

Q. Was anything said about what he was to get for his claim—Mr. Robinson? A. \$200.00.

Q. And did you locate him on a claim?

A. He was located later.

Q. Do you remember who provided the locator for him? A. I did.

Q. Do you remember who the locator was?

A. Why, Mr. Knight and Mr. Benton.

Q. And did you furnish him the money for the locator? A. I did.

Q. And for the final proof? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Did you take a note for the final proof money?
[2042—1712]

A. Yes, sir, and a mortgage. I endorsed the note over to Mr. Kettenbach, without recourse.

Q. When was that??

A. Right after receiving it.

Q. And did you subsequently negotiate the sale of it to Mr. Kettenbach? A. Yes, sir.

Q. Was Mr. Kettenbach advised of the arrangement you had with Mr. Robinson?

A. Yes, sir, he was, the same as of the others.

Q. You told him the agreement you had with Mr. Robinson? A. Yes, sir.

Q. That was before he advanced the money for final proof? A. Yes, sir.

Q. Now, do you know George Morrison?

A. Yes, sir.

Q. Did you have any transactions with him relative to taking up a timber claim? A. I did.

Q. Do you know what Mr. Morrison's business was? A. I think he was a carpenter.

Q. And do you know how long he had been in Lewiston before?

A. No, I don't know the exact time.

Q. Do you know how long he remained after his final proof? A. Only a day or two.

Q. Now, state what your transaction with him was relative to a timber claim.

A. I was to pay him \$200.00 for the timber claim.

Q. Now, state what you said to him, whether it

(Testimony of C. W. Robnett.)

was a loan, and did you approach him or did he approach you?

A. No; he was brought to me by Mr. Varney, and I told him that I would locate him on a timber claim in 39-3, and would arrange for him [2043—1713] to hold the claim and arrange to get him all the money for a location fee and for the final proof, and that I had some deals on whereby I thought I could dispose of the claim right after the proof, but that in the event that I did not he was to give a mortgage for the money advanced, and as soon as I could sell the claim I would give him \$200.00 out of it.

Q. Now, what was he to do with the claim in the event the deal went through?

A. He was to deed it to whoever I designated.

Q. And was that arrangement before he located on the land? A. It was before he filed.

Q. And what did he say when you made that proposition?

A. He said that was all right, perfectly satisfactory.

Q. Well, how long after that conversation did he locate?

A. Why, I don't know—a few days—I don't know just how many days.

Q. And did you procure the locator for him?

A. I did.

Q. And who paid the fee of the locator?

A. I did.

(Testimony of C. W. Robnett.)

Q. And do you remember who furnished the final proof money?

A. I furnished the final proof money, and instead of taking a note I furnished the deed and Mr. Kettenbach took it up. Mr. Kettenbach raised the final proof money, along with the others.

Q. And you took a deed at once to him, did you?

A. Yes, sir.

Q. And do you know how much you negotiated that for? A. Yes—for \$200.00.

Q. And Mr. Morrison got \$200.00? A. Yes.

Q. And did Mr. Kettenbach know anything about the arrangement you had with Mr. Morrison? [2044—1714] A. He did.

Q. You told him all about it? A. Yes, sir.

Q. Do you know Edward M. Hyde? A. Yes.

Q. Was he a resident of Lewiston, or just a sojourner? A. A sojourner.

Q. What was his occupation?

A. Why, I don't know.

Q. Was he there with Mr. Morrison and Mr. Clute and these gentlemen you have named?

A. Not Mr. Clute.

Q. Mr. Pierce? A. Yes.

Q. Were they there on some contract or some work there at that time, do you know?

A. Why, they were working, I think, on the Catholic hospital. I don't know whether he was a mason or what his work was.

Q. Did you have any transaction with him relative to his taking up a timber claim? A. I did.

(Testimony of C. W. Robnett.)

Q. Well, state what it was.

A. Why, he was brought to me by Mr. Varney, and—

Q. Now, who was Mr. Varney, and did you have any connections with him relative to taking up timber claims?

A. No; he was a friend of mine, and every entryman that he brought that filed and went ahead with the claim I gave him \$15.00 out of the location fee.

Q. Now, state your connections or your relations with Mr. Hyde.

A. Well, I told him I would locate him up on a claim in 39-3, and would take his note for the location fee, and that I had a deal on for the selling of all that timber, and I thought I could get \$200.00 out [2045—1715] of his claim for him, and in case the deal wasn't so that I could sell the claim at the time of the proof that I would advance him the money, and he was to give a mortgage.

Q. And what did he say about it?

A. He said that was all satisfactory.

Q. And did you furnish him all the money?

A. I did.

Q. And he entered?

A. He entered and proved up.

Q. Do you remember who his locator was?

A. Knight and Benton.

Q. And who paid Knight and Benton the location fee? A. I did.

Q. And who gave Mr. Hyde the money for final proof? A. Mr. Kettenbach.

(Testimony of C. W. Robnett.)

Q. Well, did he give it to him personally?

A. No. I attended to all the transactions.

Q. And when was that relative to the date of final proof? A. Why, the day of the final proof.

Q. Now, did you negotiate the sale of that claim?

A. It runs in my recollection that he didn't give any mortgage. He deeded the claim right over that day to Mr. Kettenbach.

Q. Well, do you mean the deed run to Kettenbach, or that you negotiated the sale?

A. Well, I negotiated the sale, and he deeded it right to Mr. Kettenbach.

Q. How much did he get out of it? A. \$200.00.

Q. And where did he get the money from—the \$200.00?

A. Why, I handed it to him. Mr. Kettenbach put up the money.

Q. And did Mr. Kettenbach know of your agreement with Mr. Hyde?

A. He did. [2046—1716]

Q. And you told him about that at the same time you told him about the others? A. Yes, sir.

Q. Do you know one Van V. Robertson?

A. I do.

Q. Did you have any dealings with him relative to his taking up a timber claim? A. I did.

Q. Where did Mr. Robertson reside at that time?

A. Lewiston, Idaho.

Q. Was he a resident there? A. Yes.

Q. What was his business?

A. Why, he was in the saloon business. I don't

(Testimony of C. W. Robnett.)

know whether he was running the saloon himself or the bartender.

Q. Now, did you approach him relative to taking up a timber claim, or did he come to you?

A. Why, Mr. Varney spoke to him about it, and he came to me.

Q. Well, what did he say?

A. He said that he wanted to take up a timber claim, and I told him that I would locate him, and if he wanted to—he said he could pay the location fee, and I told him if at the time of final proof if he didn't have the money why I would get him the money, and that a deal was on and I could get him \$200.00 out of his claim as soon as the deal would be closed, and if the deal wasn't right ready to close he would have to give a mortgage at the time he made his final proof.

Q. Well, who was going to control the disposition of these claims? A. Why, I was.

Q. And what was he to do with his claim to make this \$200.00?

A. He was to deed it to whoever I designated.

Q. Well, what did he say about that?

A. That it was perfectly satisfactory to him.

[2047—1717]

Q. And what did he do in furtherance of that?

A. Well, he went ahead and filed and proved up.

Q. Did you give him the money?

A. I gave him the money for the final proof.

Q. And did you take a mortgage?

A. I did.

(Testimony of C. W. Robnett.)

Q. Do you remember how much it was for?

A. \$500.00, I believe.

Q. And did you take a note at that time?

A. I did.

Q. And what did you do with the mortgage—the note that he gave you to secure the mortgage—which the mortgage was given to secure?

A. Why, I signed the note on the back and put it into the Lewiston National Bank, and took credit for it.

Q. And did you have any arrangement with anybody relative to conducting that transaction that way? A. Mr. Kester.

Q. Mr. Kester? A. Yes.

Q. And did he know the arrangement you had with Mr. Robertson? A. Yes, sir.

Q. And how did he know that? A. I told him.

Q. And did you tell him all about the arrangement with Robertson? A. Yes, sir.

Q. And did you negotiate—did you conduct the conveyance of this property? A. To the bank?

Q. Yes.

A. No. Mr. Kester wrote Mr. Robertson after a certain length of time and asked him to give a deed to the bank. [2048—1718]

Q. Do you know Mr. Drury M. Gammon?

A. I do.

Q. Was he a resident of Lewiston?

A. He was.

Q. What was his business at that time?

A. Waiting on the table in the hotel.

(Testimony of C. W. Robnett.)

Q. And did you have any transaction with him relative to his taking up a timber claim?

A. I did.

Q. Now, state all you can remember about it.

A. Why I ran on to a claim in 40 and 3, and I went to Mr. Gammon and told him that if he would file on that claim that I would advance all the money, and when the claim was sold I would give him \$350.00 out of it.

Q. Now, is that the first conversation you had with him?

A. Yes, that is the first conversation; and he said that he would file and prove up and deed the claim under those agreements—arrangements.

Q. And did you furnish him any money?

A. Yes; I furnished the money for his trip into the timber, and for the filing fee—\$9.00.

Q. And what else?

A. And all the money for the final proof, and under this arrangement when it came time for the final proof why I had him give a mortgage to Mr. Kester.

Q. This Drury M. Gammon? A. Yes.

Q. And did you conduct the sale of this land?

A. Why, I bought it.

Q. And how much did you give him over and above expenses?

A. Let me see now—I think it was \$350.00.

Q. Did you ever have any relations with Mr. William B. Benton [2049—1719] relative to his taking up a timber claim? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Now, what was your arrangement with him?

A. He was to go ahead and file and prove up, and I was to stand all the expenses, and we were to divide the profits. He agreed to the conditions and went ahead.

Q. Well, one minute, before we get on to that. You say you took a deed to yourself from Mr. Gammon? A. Yes, sir.

Q. And did you afterwards deed it to somebody else?

A. I deeded it to the Lewiston National Bank.

Q. And did Mr. Kester know anything of the arrangements you had with Mr. Gammon when you— Did I understand you to say you got the money from him for that land? A. For the final proof.

Q. From Kester? A. Yes.

Q. And did he know the arrangements you had with Mr. Gammon? A. He did.

Q. How did he know that? A. I told him.

Q. Now, do you remember how much you got out of that deal?

A. No. At the time I deeded that claim there was another one for \$2500.00 to the bank—payable—an indebtedness there.

Q. Well, was there any arrangement between you and Mr. Kester and Mr. Kettenbach about a divide on that claim?

A. It was on the—not on that claim, but on the Van Robertson claim.

Q. Now, what was that arrangement? What was the divide on that?

(Testimony of C. W. Robnett.)

A. Well, whatever was made out of it above paying the expenses to the bank would be divided.

Q. Now, speaking about the William B. Benton claim, state what [2050—1720] arrangement, if any, you had with him?

A. Why, he was to go ahead and file and prove up, and when the claim was sold we were to divide the profits, and I was to stand all expenses, and we were to deduct all the expenses from the price to whoever we sold, and divide it.

Q. And who was to control the disposition of that land? A. Why, I was.

Q. That was the agreement with Mr. Benton?

A. Yes.

Q. And this was before any entry at all was made?

A. Before any entry was made.

Q. Who paid the money for the expenses of taking up the claim? A. I did.

Q. How was it furnished?

A. Why, by him giving a check on the bank, and I took care of the checks.

Q. And did he have an account at the bank?

A. No, sir.

Q. And did he check on the bank? A. He did.

Q. To an amount sufficient to take up the claim?

A. Yes, sir.

Q. And make the proof? A. Yes, sir.

Q. And do you know what became of the claim after proof was made?

A. Why, it was finally deeded to me, and then to Mrs. White, and then to the Clearwater Timber Company.

(Testimony of C. W. Robnett.)

Q. Now, did any of the defendants know of the arrangements you had with Mr. Benton relative to the taking up of that claim? A. They did.

Q. Which one of them knew that?

A. Both of them—or all of them. [2051—1721]

Q. Now, did you have any negotiations with Mrs. Elizabeth White relative to deeding this claim to her? A. No, sir.

Q. With whom did you conduct the negotiations?

A. Why, with Mr. Kettenbach.

Q. And with whom was the settlement made with Mr. Benton?

A. I made the settlement; I advanced the money; he drew through the checks to the full extent of what he was entitled to.

Q. Did you know anything about the transaction of the conveyance of Mrs. White to the Clearwater Timber Company?

A. The deal was negotiated by Mr. Kettenbach.

Q. Do you know anything about it, or don't you?

A. I know he arranged, or he said he could arrange if I deeded the claim to Mrs. White he would be able to negotiate the deal.

Q. Well, did you see the agent of the Clearwater Timber Company relative to this?

A. No. Mr. Kettenbach said not to see him; that he would see him and negotiate the deal.

Q. What was your purpose in conveying it to Mrs. White?

A. Why, on account of the Clearwater Timber Company officials wouldn't take a claim that came direct through myself or Mr. Kester or Mr. Ketten-

(Testimony of C. W. Robnett.)

bach, but if it came through Mrs. White they would take it.

Q. Well, where did you get that information from? A. From Mr. Kettenbach.

Q. Now, do you know Mr. Joel H. Benton?

A. I do.

Q. Did you have any transactions with him relative to taking up a timber claim? A. I did.

Q. Now, state what they were.

A. Why, he was to go ahead and—

Q. Now, you say “he was to go ahead.” Now, state what happened first. [2052—1722]

A. Well, the starting of the proposition was when we went up and looked at the homesteads, and while we was there at the homestead—

Q. Now, you haven’t said anything about his going up to a homestead. Tell us about that.

A. Well, in the summer of 1902 I located—that is, I paid for three location fees to Mr. Smith—W. A. Smith—for locations on unsurveyed land, and on one of these claims I put Joel H. Benton, and the other W. B. Benton, and the other Mrs. Harris.

Q. Mrs. Mary Harris?

A. Yes.

Q. Now, what were they to do? What was your arrangement relative to that?

A. They were to go ahead and stay there, and I was to pay all expenses and when the timber came in—was surveyed and thrown open for settlement, they were to file on that timber and stone entries and prove up, and we were to sell the claims and divide the profits.

(Testimony of C. W. Robnett.)

Q. Who was to control the sale of them?

A. I was.

Q. And who was to furnish the money for all of this? A. I was.

Q. Did you furnish them all the money?

A. Why, we never went through with the deal.

Q. Well, did you start the deal?

A. We started it; they stayed up there one Sunday.

Q. And who paid the expenses? A. I did.

Q. And did you pay each one the expenses, or did you have one of them that you gave the money to pay the expenses of all of them?

A. Well, Joel H. Benton was supposed to check out for all the expenses up there.

Q. You say was supposed to—did he? [2053—1723]

A. Well, he checked out most of the expenses; some of the expenses of some of them I paid.

Q. How did he check it out?

A. Why, he had a check-book and just checked on the Lewiston National Bank.

Q. Did he have an account at the bank?

A. He did not.

Q. How were the checks taken care of?

A. They were taken care of and charged to my account.

Q. Now, you say that deal fell through?

A. Yes, sir.

Q. Now, was that before his taking up a timber claim?

A. Well, he was up there on this homestead at the

(Testimony of C. W. Robnett.)

time, and I was up in the timber, and Mr. Smith came along and said he had a couple of claims in 39-3 that could be filed on right now.

Q. All right?

A. So I told him to go ahead and under the same arrangements I would carry it through, I would stand the expenses, and when the claim was sold we would divide the profits.

Q. Well, who was to sell the claim? A. I was.

Q. What did he say about that?

A. It was satisfactory.

Q. And did he proceed?

A. He proceeded and filed and proved up, and later on—

Q. Who furnished all the money? A. I did.

Q. And did you subsequently get a deed for this property? A. I did.

Q. And what did you do with the property?

A. Why, I deeded it to Mrs. White.

Q. Now, did anybody know of your negotiations and your agreement [2054—1724] with Mr. Joel H. Benton?

A. Mr. Kester and Mr. Kettenbach.

Q. How did they know that?

A. From our conversations and checks, etc.

Q. You told them the arrangement you had with him? A. Yes, sir.

Q. And who negotiated the conveyance to Mrs. White? A. Mr. Kettenbach.

Q. That is William F. Kettenbach?

A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. And do you know why it was you conveyed to Mrs. White?

A. Only Mr. Kettenbach's statement, the same as on the W. B. Benton claim.

Q. And what was that?

A. That he could negotiate a deal with the Clearwater Timber Company if the land was deeded to Mrs. White, or otherwise they wouldn't buy it from any of us.

Q. Well, did he state why they wouldn't buy it from any of you?

A. Well, on account of the investigations and the trials that were pending.

Q. Do you know Pearl Washburn? A. I do.

Q. Did you have any dealings with her relative to taking up a timber claim? A. I did not.

Q. Did you know anything of the conditions under which she took up a timber claim?

A. Well, Kettenbach advanced the money for her taking up the claim.

Q. Do you know anything about whether or not she had an arrangement with Mr. Kettenbach, of your own knowledge?

A. No, I don't. I know that he always— [2055—1725]

Q. Well, I don't want anything except what you know of your own knowledge.

A. No, I don't know.

Q. Did you have any relations with Gerry Vanartsdalen relative to his taking up a timber claim?

A. No, sir.

(Testimony of C. W. Robnett.)

Q. Do you know John E. Nelson? A. I do.

Q. Did you have any relations with him relative to his taking up a timber claim? A. I did.

Q. Well, now, state what your arrangement with him was, if any. A. Why,—

Q. Did you go to see him, or did he come to see you?

A. I saw him on the street and asked him if he didn't want to take up a timber claim. He said he did, but he didn't have any money, and I told him I had arrangements made whereby I could take care of whatever money was needed if he would give a note for the location fee, and that Mr. Curtis Thatcher would advance the money for the final proof and also for the location fee, and at the end of the time he could give his note provided the sale wasn't made, and I thought I could get him \$200.00 out of his claim, and he said that was all right and it was perfectly satisfactory, and that if I was certain that he would get that much out of it he would go ahead and make the deal—go ahead and file.

Q. Now, this conversation was before he went to the land? A. Yes, sir.

Q. You were to furnish all the money, were you not?

A. Yes, sir, excepting his expenses up into the timber, which he paid.

Q. And who was to control the sale of this land?

A. I was.

Q. Well, did he accept that proposition? [2056—
1726]

(Testimony of C. W. Robnett.)

A. Yes, he accepted that, and filed and proved up, and gave a mortgage to Curtis Thatcher, and I think he finally deeded it to Curtis Thatcher.

Q. And did Mr. Thatcher know anything about your arrangements with Mr. Nelson?

A. No, he didn't know anything about it no more than I was to arrange to sell it; that I had deals on to dispose of the timber claims.

Q. Did Mr. Thatcher know that you were to furnish Mr. Nelson all the money?

Mr. TANNAHILL.—We object to that as a conclusion. Let him state what was said.

Mr. GORDON.—Q. What did you tell him?

A. Well, I told him that the money was to be furnished by me to Mr. Nelson for the location fee and for the final proof, and that he would give me a mortgage after the final proof.

Q. Well, did you tell him anything further about the arrangement you had with Mr. Nelson?

A. Well, that it was to be included in the sale of the timber claims that I was bunching up to be sold in a deal that I had pending.

Q. And you told him that before he advanced the money? A. Yes, sir—at the time.

Q. Did you tell Mr. Nelson about this deal?

A. Yes, sir, I told Mr. Nelson.

Q. That you were assembling claims for that purpose? A. Yes, sir.

Q. That was before Nelson went to the land?

A. That was before he went to the land.

Q. Now, do you know Mr. Soren Hansen?

(Testimony of C. W. Robnett.)

A. I do.

Q. Did you have any relations with him—transactions with him relative to a timber claim?

A. I did. [2057—1727]

Q. Well, now, state all of the transaction you had with him.

A. Why, he was a farmer out there, out from Lewiston, and I run on to him on the street and asked him if he didn't want to take up a timber claim, and he said he did but he didn't want to use any of his money; that he needed it all on his farm. I told him there was a chance for him to make \$200.00 if he wanted to take up a claim, and I told him about the deal that was pending and that I would get him all the money from Curtis Thatcher, and if he wanted to go ahead we would get him \$200.00 or \$250.00 out of the claim.

Q. Was anything said as to what he was to do to get this \$200.00?

A. He was to go ahead and file, and prove up and give a mortgage on the claim if the deal wasn't ready to close at that time, for a year, and I was to have the handling of the claim so that I could make the deal as soon as anything was in shape for it.

Q. Well, what was he to do?

A. He was simply to go ahead and deed the claim over to whoever I should designate, and receive the \$200.00.

Q. And did he accept that proposition?

A. He accepted it.

Q. Did you furnish him all the money?

(Testimony of C. W. Robnett.)

A. I did.

Q. And did he afterwards convey that property to somebody?

A. Yes; he made out a deed to the Clearwater Timber Company.

Q. Now, do you remember what the first deed was he made out?

A. Well, he made out a deed sometime, I think it was in the bank, when I had a sale on.

Q. Well, was the deed in blank? A. In blank.

Q. Now, did any of the defendants know of this arrangement you had with Mr. Soren Hansen?

A. Yes.

Mr. TANNAHILL.—We object to that as calling for a conclusion of [2058—1728] the witness and not stating a fact.

Mr. GORDON.—Well, if you will wait, I will ask him now.

Q. Did you tell them anything about it?

A. I did.

Q. Now, state all you told them about it.

A. I told Mr. Kester and Mr. Kettenbach both, I told them all about it a number of different times, in regards to the conversation we had relative to timber matters.

Q. Then, you never used that deed that was made in blank? A. No, sir.

Q. Well, now, state what happened next relative to that claim.

A. Why, I seen Mr. Hansen in town and told him that I could get him so much money out of the claim, and had him make out a deed to the Clearwater

(Testimony of C. W. Robnett.)

Timber Company, his wife was there, and he acknowledged it, and the consideration I believe was left blank, and he made it out and I paid him the money.

Q. How much did you pay him?

A. My recollection is somewhere between \$60.00 and \$80.00.

Q. And where did you get the money with which to pay him with?

A. From the Lewiston National Bank, from Mr. Kettenbach.

Q. And had you talked with Mr. Kettenbach about that? Why was the deed made out to the Clearwater Timber Company?

A. Why, because he had arrangements made with Nat. Brown for them to buy the claim.

Q. And did you deliver that deed to Mr. Kettenbach? A. I did.

Q. Well, now, was there another deed procured from Hansen that you know of?

A. No, there wasn't. I made out another deed something like two months afterwards and sent it up to Mr. Hansen.

Q. Now, who was the grantee in that deed?

A. W. F. Kettenbach. [2059—1729]

Q. And what became of that deed?

A. I don't think it was ever delivered.

Q. You sent it to Mr. Hansen, did you?

A. Yes, sir.

Q. Did you ever see Hansen after that?

A. Yes.

(Testimony of C. W. Robnett.)

Q. And ask him why he didn't deliver the deed?

A. Yes, sir, I seen him and asked him if he had delivered the deed, and he said he had not; he wanted to see me first and get the other deed back.

Q. What deed was that?

A. The Clearwater Timber Company deed.

Q. Do you know Robert O. Waldman?

A. I do.

At this time a recess was taken until 1:30 o'clock
P. M. [2060—1730]

The hearing was resumed at 1:30 P. M., pursuant to adjournment.

CLARENCE W. ROBNETT, recalled for further direct examination, testified as follows:

Mr. GORDON.—Q. Mr. Robnett, just before adjournment, I asked you if you knew Mr. Robert O. Waldman. A. Yes, sir.

Q. Did you ever have any transactions with him relative to taking up the timber claim that he entered upon? A. Yes, sir.

Q. Where was that?

A. I went to the store where he was working, the Fair store.

Q. Where was this? In Lewiston, Idaho?

A. In Lewiston, Idaho; yes.

Q. What did you say to him?

A. I asked him if he wanted to take up a timber claim, and he says, "Well, I am building a house and I wouldn't take up a timber claim unless I could sell it right away," and I says, "Well, I will tell you what I will do; if you want to take up a timber claim, I

(Testimony of C. W. Robnett.)

have one up here, and I know what it is, and I will give you \$400.00 for your right."

Q. Was anything said about money?

A. "All the money for expenses that you need I will furnish, and you will get \$400.00 clear out of the timber claim, so much at the time of the proof, and the balance a little later on."

Q. Well, now, what was he to do to make that?

A. Why, he was to file on the timber claim and make proof and deed the same to me as soon as proof had been made.

Q. What did he say about it? [2061—1731]

A. He said that would be all right, he was perfectly willing to sell his right for \$400.00.

Q. Well, did you have him locate it?

A. He went ahead and filed, and I paid the expenses up to the timber and back, and also for the filing, and at the time of the final proof I gave him the money, and he went over and made his proof, and came back and give me a deed, that afternoon or the next day or two, and I gave him I think \$200.00, and later on, why—

Q. Who was the deed to?

A. The deed was direct to me.

Q. Well, what did you do with the deed? Have you still the deed?

A. No; I sold—deeded that to the Lewiston National Bank.

Q. How was it that you happened to deed it to the Lewiston National Bank?

A. Why, in the settlement up of affairs when I

(Testimony of C. W. Robnett.)

left the institution I deeded that with other deeds, in one deed.

Q. With whom did you have your negotiations?

A. Why, Mr. Frank Kettenbach was in there at that time, but it was understood before that that that claim if it wasn't sold was to be deeded to the bank, with Mr. Kester and Mr. Kettenbach, Will Kettenbach.

Q. Did Mr. Frank Kettenbach know of your arrangement with Mr. Waldman? A. Yes.

Q. How did he know that?

A. Why, I told him about it.

Q. Do you know Mr. Ellsworth M. Harrington?

A. I do.

Q. Do you know whether he took up a claim under the timber and stone act? A. He did. [2062—1732]

Q. Did you have any arrangement with him before he made his entry relative to taking up a timber claim? A. Yes, I located him.

Q. Now, begin at the beginning, if there is any beginning. Did you talk with him before locating him?

A. He came down to the house one evening; yes, sir.

Q. Your house?

A. Yes, sir; Mr. Knight had spoken to him about taking up a claim and asked him to come down to see me. He came down there and I told him the boys had some timber claims—

Q. Who were the boys?

(Testimony of C. W. Robnett.)

A. Ed. Knight and Will. Benton.

Q. Were you interested in those claims?

A. Yes, I was interested with them in the location. And if he would go ahead there and locate and let me handle the claim and put through the deal I could get him I knew perhaps \$300.00 on the claim for his right, and the balance above that, why, I would take for my trouble, but that would give him \$300.00 for the claim out of the deal.

Q. Was anything said about furnishing the money?

A. Yes, he wanted to know how about the money in case the deal didn't go through, and I told him I had arrangements whereby I could get the money to pay the location fee and pay for the final proof, and that he would have to give a mortgage at the time and give a note.

Q. What did he say?

A. He said that was all right and satisfactory.

Q. What was he to do to make the \$300.00?

A. He was to deed the claim to whoever I designated.

Q. What did he say about that?

A. He said that was all right, he would leave the matter in my [2063—1733] hands to handle, and whenever I asked him to deed the claim he would do so.

Q. Did you have him located? A. I did.

Q. Who paid the location fee, or the fee of the location? A. I did.

Q. Who paid the filing fees?

(Testimony of C. W. Robnett.)

A. I don't know whether I did or he did, but I think I did.

Q. And who paid the final proof? Who furnished the money for final proof? A. Will Kettenbach.

Q. And who negotiated for the money?

A. I did. I got the money when it came to final proof, and after final proof he gave a note to me for the amount of the location fee and the money advanced, the bonus, and I endorsed the note without recourse to Will Kettenbach.

Q. Do you know whether the land was ever transferred from Mr. Harrington?

A. Yes, sir; it was transferred to Will Kettenbach.

Q. When was that note taken,—at the time of final proof? A. Taken at the time of final proof.

Q. You didn't assign the mortgage, did you?

A. No, sir.

Q. Who negotiated this transfer to Will Kettenbach? A. I did.

Q. Did Mr. Kettenbach know of your agreement with Mr. Harrington? A. He did.

Q. Did he know at the time that he advanced the money for final proof? A. He did. [2064—1734]

Q. How did he know that?

A. By previous conversations and matters that I told him.

Q. Previous conversations with you?

A. Yes, sir.

Q. Mr. Robnett, did you have any papers or memoranda or plats or checks which you used in these

(Testimony of C. W. Robnett.)

timber transactions that you have related?

A. I did.

Q. Where are they now?

A. Why, I left them in my tin boxes in the Lewiston National Bank.

Q. What do you call your tin boxes,—private boxes? A. Private boxes.

Q. Safety deposit boxes?

A. Safety deposit boxes.

Q. Have you ever made a demand for that box?

A. I have.

Q. Was the demand complied with, or was it denied? A. It was refused.

Mr. GORDON.—I make a demand of counsel for the Lewiston National Bank, on the record, to produce the safety deposit box of C. W. Robnett, containing the memoranda and checks, and so forth, referred to in my question, relative to the transactions in suit.

Mr. BABB.—Will you furnish me a copy of that interrogatory there, those items?

Mr. GORDON.—He can read it to you (indicating the stenographer).

Mr. BABB.—I would like to have a copy of it to see what you wanted.

Mr. GORDON.—Q. Do you recall any checks that you used in these transactions at the present time that are in that box?

A. The checks that went to pay for the Waldman claim, the Gordon [2065—1735] claim—

Q. That claim isn't in suit though.

(Testimony of C. W. Robnett.)

A. Oh, it isn't in suit,—and the Mack. Gammon claim.

Q. Drury M. Gammon?

A. Drury M. Gammon.

Q. What other papers relative to these transactions were in that box?

A. The plats of the different lands owned by myself and over which I had control, and also the claims and land owned by Kester and Kettenbach, which I had at different times worked on the different details, made at the time of different—

Q. Were there any letters or correspondence in your private box or boxes which you have referred to relative to these transactions or the timber transactions of Kester and Kettenbach?

A. Yes, there was some letters there from different parties.

Q. Do you recall from whom they were?

A. Why, from,—there is a letter there from Wilbur Yeadsley, on a deal that we had pending, then letters from other people; I don't recall now just who they were.

Q. Did you take any care, Mr. Robnett, of the character of the people that you would locate on these claims?

A. Yes; I never located anybody but what I had the handling of their claims, that is, would have the right to sell the claims.

Q. Did you locate anybody on any claim who wouldn't make an agreement with you before they entered it to convey it to whom you would direct?

(Testimony of C. W. Robnett.)

A. No.

Q. In your first conversation with Mr. Kester relative to your arrangement with him and Mr. Kettenbach about taking those timber claims was any definite amount fixed or share stated that you were to receive from these claims? [2066—1736]

A. No, they didn't; they said that whenever there were any claims that I was instrumental in turning over and that they got possession of when the claims were sold, that I should share in the profits.

Q. And there was nothing said as to what that share should be?

A. No; that they would treat me right in regards to that, and I was to share in the profits.

Q. Do you know how many claims you did turn over to them under that arrangement?

A. Well, there was a great many.

Q. Well, I mean approximately.

A. Perhaps fifteen or sixteen.

Q. And have you still an interest in those claims to the extent of sharing in the profits?

Mr. TANNAHILL.—We object to that as leading and suggestive, irrelevant and immaterial.

Mr. GORDON.—Answer the question.

A. Yes, sir.

Q. Now, after your first conversation with Mr. Kettenbach and the conversation you had with Mr. Kester, shortly thereafter, that you have detailed relative to your arrangement for entering people on timber claims, did you have a number of timber claims cruised? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Do you know how many there were?

A. There was about fifteen.

Q. And they were, according to your arrangement with Kester, not in the territory in which they were locating at that time, is that correct?

A. Yes, sir. Any claims I was to locate I always talked it over with them so as it wouldn't conflict.

Q. No; I am speaking now before you located about the cruising. [2067—1737] A. Yes, sir.

Q. You had cruised fifteen claims?

A. Yes, sir.

Q. Do you know in what territory that was?

A. That was in 39-3, and 39-2.

Q. Now, did you submit those estimates and cruises to anyone? A. Yes, sir.

Q. To whom?

A. To Mr. Kester and Mr. Kettenbach.

Q. Did you have any arrangement with either of them as to those claims when you had located entrymen on them?

A. I was to go ahead there and handle them—

Q. Don't use the word "handle." Tell what you were to do.

A. I was to go right ahead; they didn't care to enter that field just at that time, as it was second growth timber, and they wanted to use their entrymen in other territory, but later on, if they wanted to handle any of those things, they had the preference.

Q. Did you have that arrangement with them about having the preference right before you entered or placed any entrymen on those claims?

(Testimony of C. W. Robnett.)

A. I did.

Q. You have spoken here about having deals with some other people, that you were assembling claims with the purpose of selling to. Before you tried to deal with any other people did you have any talk or arrangement with any of the defendants prior to that time, as to whether or not you could enter into such an agreement? A. I did.

Q. Did you, in every instance, before you submitted it to anybody else, submit it to any one of the defendants? A. Yes, sir.

Q. To whom did you submit them? [2068—1738]

A. Why, to Mr. Kester and Mr. Kettenbach.

Q. Now, during the time of all these timber transactions, as far back as 1902, with which either you or Kester and Kettenbach had anything to do, what were your relations with Mr. Kester and Mr. Kettenbach?

A. Well, of a very confidential nature.

Q. Were you the confidential man at the bank?

A. Yes, sir.

Q. I will ask you whether or not all of your timber transactions and a great many of their timber transactions were discussed between you?

A. They were, very frequently.

Q. Do you know Harvey J. Steffey?

A. I do.

Q. Did you ever have any direction from any of the officers of the Lewiston National Bank relative to honoring his checks? A. Yes, sir.

Q. Well, state what it was.

(Testimony of C. W. Robnett.)

A. Why, Mr. Kester came to me and told me that all the checks of Mr. Steffey could be honored, as he was up in the timber doing some cruising, and also doing some locating for them, and at different times he was doing some buying, and his checks would be allowed, and whenever they came in they would be taken care of, and if there was an overdraft it was all right.

Q. Now, did you ever hear of a species of check that was known at the Lewiston National Bank, called the circle K check? A. Yes, sir.

Q. State what that was.

A. Why, it was a check on the Lewiston National Bank, signed by William Dwyer, with a circle K either in the upper left-hand corner or the lower left-hand corner. [2069—1739]

Q. What do you mean,—that there was a K put on it, with a circle around it? A. Yes, sir.

Q. Was that in any peculiar kind of ink?

A. Oh, no; his checks was made out sometimes in pencil and sometimes in ink, but it was to designate that those checks were timber transaction checks.

Q. Now, did Mr. William Dwyer ever have an account with the Lewiston National Bank?

A. No, sir.

Q. And these were drawn on the regular Lewiston National Bank check, were they? A. Yes, sir.

Q. How were they signed?

A. Signed William Dwyer.

Q. Do you know when those checks first came into use?

(Testimony of C. W. Robnett.)

A. When they started in the timber business, in 1902.

Q. How long did they continue?

A. Why, up to 1907, perhaps later.

Q. Can you tell anywheres near the amount that those checks would aggregate?

A. I should judge somewheres between a hundred thousand to a hundred and twenty thousand dollars.

Q. Do you know what those checks were used for?

A. They were used in the timber transactions, the purchasing of lands.

Q. Whose timber transactions?

A. Kester and Kettenbach's purchase of claims, and paying expenses up in the timber of the different parties that went out, crowds. [2070—1740]

Q. Do you know how those checks were disposed of, how they were entered, to whose accounts?

A. When they came in they were carried in the cash items until Mr. Kester and Mr. Kettenbach made up their checks; then they would take them up.

Q. Explain what you mean by "carried in the cash items."

A. Well, there is the teller's cash has the different kinds of cash subdivided, and also checks carried over, called cash items.

Q. Checks that are not settled up that day and entered in the books are carried as cash items?

A. Carried in the cash and counted as cash.

Q. You say these checks were carried in cash items until what was done with them?

(Testimony of C. W. Robnett.)

A. Whenever Mr. Kettenbach and Mr. Kester would make up their checks they would take up these cash items and divide them and subdivide them, and each one take so much of them, whichever it would be, or there would be sometimes notes given that would take them up.

Q. Do I understand then that these checks would remain as cash items until a considerable number had come in and then either Mr. Kester or Mr. Kettenbach would add them up and take them out and put something back in their place? A. Yes, sir.

Q. What would be put back in place of them?

A. Well, it would be checks of Mr. Kettenbach and checks of Mr. Kester, and sometimes notes were given by the different parties which would take up these items.

Q. To make up the total amount of the cash items?

A. Yes, sir.

Q. Do you know how long those circle K checks would remain from time to time as cash items?
[2071—1741]

A. Well, that varied according to the time; sometimes for a week and sometimes for a month, and sometimes longer.

Q. Do you know in what amounts they would reach before they were taken up, as a usual thing?

A. Well, it depended at that time altogether whether they were buying some timber at that time, or paying proof money; sometimes run up into eight or ten thousand dollars, or more.

Q. Do you know whether Mrs. Kittie E. Dwyer

(Testimony of C. W. Robnett.)

had an account at the Lewiston National Bank?

A. Yes, sir.

Q. Do you know over what period that account ran?

A. It run along a good share of the time—

Mr. TANNAHILL.—We object to that, as the books are the best evidence.

Mr. GORDON.—Well, we have got it in; this is merely preliminary.

WITNESS.—Along practically during the time of the timber transactions, I don't know but until I went out of the bank.

Mr. GORDON.—Q. Do you remember the date that you left the bank, severed your connection with the bank? A. The last time?

Q. Yes. A. March 19, 1909.

Q. Do you know what checks were charged to the account of Kittie E. Dwyer?

A. There were no checks supposed to be charged there except drawn by Mr. Dwyer; except ones that didn't have the circle K on, and there was different times where she had purchased timber claims checks were charged up to her account, and then later a note would be given. [2072—1742]

Q. Do you know whether or not any of the expenses of the timber transactions of Kester and Kettenbach and Dwyer were ever charged to that account?

A. I think not; not to my recollection, there was never any of them.

Q. Do you know how that account was ever supple-

(Testimony of C. W. Robnett.)

mented by deposits of any person other than Mrs. Kittie E. Dwyer and her husband, William Dwyer?

A. Sometimes Mr. Dwyer's checks, he would fail to put on the circle K, and they would come in and be charged up to Mrs. Kittie E. Dwyer's account, and then Mr. Dwyer would come in and those checks would be taken out and the ones intended for the timber transactions would be put back into the cash with a circle K, and a deposit slip would be entered crediting Mrs. Dwyer's account.

Q. Checks either drawn by Kittie E. Dwyer or by William Dwyer were honored out of that account, were they? A. Yes, sir.

Q. Do you ever know of any deposits being made or credits being made to that account by any of the defendants other than Dwyer?

A. Yes, sir; Mr. Kester made deposits in there at different times.

Q. Do you know what they were for?

A. Yes, sir; sometimes it was taking up some of those checks, and then for notes, and other timber transactions which should go into that account.

Mr. GORDON.—Before I forget it, Mr. Tannahill, do you remember, while we were taking depositions at Lewiston, that you asked that counsel for the Government would produce the homestead entry papers of a Mr. Flood and Mr. Williams?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—I will state that I have advices from the officers [2073—1743] of the land office at Lewiston that, in compliance with my request, the

(Testimony of C. W. Robnett.)

general land office had forwarded the two sets of entry papers, and that they are at your disposal at the land office whenever you see fit to use them.

Mr. TANNAHILL.—All right. They will remain there until we get to Lewiston to take our evidence up there. You were saying something about some papers that Mr. Babb had gotten that Mr. Smith produced.

Mr. GORDON.—Yes, there was an exhibit that was produced the first day that Mr. Smith testified that I asked be read into the record, relative to the manner in which the stock was held at a certain time, I think it was July 7th, 1907, prior to July 7, 1907.

Mr. BABB.—January 7th.

Mr. GORDON.—January 7, 1907, and how it was held on that day, and I think that in getting ready to cross-examine Mr. Smith you called for that paper and some other papers, and you must have carried it off with your papers when court adjourned that day.

Mr. BABB.—I put my papers away and I didn't see any such paper among them when I got down to the office. It is not likely that I would carry it away when it was an exhibit; but when I go back I will look again.

Mr. GORDON.—And then there were some other papers that I think I handed you, Mr. Babb. It was the list of notes that the two \$20,000.00 notes of Mr. Kester's and the \$38,000.00 Colby, Coryel note, and that they were in renewal of.

Mr. BABB.—The \$9,500.00 note, you mean, in-

(Testimony of C. W. Robnett.)

stead of the \$38,000.00 note.

Mr. GORDON.—The Kester note—well, whatever they were. There were four or five sheets of paper, and I think you must have carried them off.
[2074—1744]

Mr. BABB.—I don't remember having those.

Mr. GORDON.—I handed them to you when you were cross-examining Mr. Smith.

Mr. GORDON.—Q. Mr. Robnett, do you remember an account in the Lewiston National Bank ledgers that was opened in the name of Kester and Kettenbach? A. Yes, sir.

Q. What was that account known as?

A. Why, transactions in which Mr. Kester and Mr. Kettenbach had, that they were in together, that they used to run through there a great deal, Kester and Kettenbach; sometimes they run part of their timber transactions through there, and other matters.

Q. Did that account have any name? Was it known in the bank by any particular name?

A. The Kester and Kettenbach account.

Q. Was that all? A. Yes.

Q. Known as the Kester and Kettenbach land account? If it wasn't, why say so.

A. No, not in particular.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. BABB.)

Q. Was there any other claim or land that you conveyed to the Lewiston National Bank other than the Robert Waldman claim? A. Yes.

(Testimony of C. W. Robnett.)

Q. What other one?

A. Why, the Gordon claim.

Q. Gordon? [2075—1745] A. Yes.

Q. Is that all?

A. The Gammon claim; I think that is all.

Q. With whom did you have your dealings for the transfer of the Gordon and Gammon claims to the Lewiston National Bank?

A. The close up was with Frank Kettenbach.

Q. I believe you stated—

A. Let's see. No; the claims that I transferred to Mr. Kettenbach was the Waldman and the Gordon claims. The Gammon claim was with Mr. Kester.

Q. Was that later?

A. No; that was before; the Gammon claim was the first one to be transferred, and the Waldman and Gordon claims was transferred in the same deal.

Q. About what date was the Gammon claim transferred?

A. Why, it was—I couldn't state whether it was in 1906 or 1907.

Q. What date was the Waldman and the Gordon claims transferred?

A. Well, the deeds were signed some time, I think, in September of 1907, or the 1st of October, somewhere along there.

Q. The patents had issued on those claims to the entrymen, had they, at that time?

A. It is my recollection that they had.

Q. All the matters then of the negotiations to secure the patents for those claims and securing

(Testimony of C. W. Robnett.)

deeds from entrymen had been closed up?

A. Yes, sir.

Q. Prior to the time Frank W. Kettenbach negotiated with you for the transfer of those claims to the bank? A. Yes, sir. [2076—1746]

Q. Now, what was the consideration for the transfer of those claims by you to the bank?

A. Twenty-five hundred dollars for the last two.

Q. When was that consideration paid?

A. Why, it was closed up, closing up some indebtedness there at the bank.

Q. Indebtedness owing by you to the bank?

A. Yes, sir.

Q. The consideration for those deeds then was money you was owing the bank?

A. A portion of it, yes.

Q. What portion?

A. I don't remember now just how much of it; a good share of it.

Q. Was you paid some cash in addition to what you was owing? A. It was placed to my credit there.

Q. And you afterwards drew it out?

A. Yes, sir.

Q. About how much of that was cash, what fraction?

A. I don't recall; I don't know just what the amount was.

Q. On the Gordon and Waldman claims, for instance?

A. That is the ones—the Gordon and Waldman claims are the ones we are talking about. I say I

(Testimony of C. W. Robnett.)

don't recall just how much the credit was.

Q. Well, was it \$10.00 or \$500.00 or \$1,000.00?

A. No; it was somewhere from \$300.00 to \$500.00, I think.

Q. It was placed to your credit the day of the date of those deeds, or the deed?

A. I couldn't say whether it was at that time or just when it was.

Q. It was placed to your credit when you closed the deal?

A. It was, about that time, I should judge.
[2077—1747]

Q. It is not likely they put it in your account and gave you credit for it till you delivered the deeds, is it?

A. I don't think so, no.

Q. Now, you were trying to make as good terms with Mr. Frank W. Kettenbach in selling those claims to the bank of which he was president as you could, were you not, in your own interest?

A. Why, I simply—he said that that at that time was all that they would give me for those claims.

Q. Well, you was trying to do as well for yourself as you could, were you not, in selling those claims to the bank?

A. Well, not necessarily, no, it is not that way; I considered that I had other interests—I would never have allowed the claims to go in at that price, but it was simply to close things up and get the indebtedness off the books.

Q. Well, you weren't doing anything in order to depreciate in the mind of Mr. Frank W. Kettenbach

(Testimony of C. W. Robnett.)

the value of the claims, were you?

A. No, sir, I was not; and he stated at the time that I deeded those claims over and paid the indebtedness there, he said that when those claims are sold, if they sold for more than that, "You can have it, with the interest up to the bank at that time."

Q. He said you could have it?

A. Yes, sir; if I could make the sale and close it up. It was simply a proposition of turning it over to them for the purpose of wiping out that indebtedness.

Q. He said that as a mere gratuity, that was a mere gratuity, wasn't it, simply a kindness on his part, was it not?

A. No, sir; one of the conditions. It was one of the conditions.

Q. You exacted that, did you?

A. Well, not necessarily exacted it, but I stated, "I ought to have got more out of those claims," and he says, "Well, I am perfectly [2078—1748] willing that you shall, but we want to get this matter straightened up and get it in a little better shape, and you can give a deed here and any time those claims can be sold you can have whatever is above that with the interest to the date of the sale."

Q. After you closed the deal you told him you should have gotten more than that? A. Yes, sir.

Q. Then, in response to that he told you that the bank didn't care for anything except to get their money out of it and interest, and when they sold it, if they got more than that, they would allow you that.

(Testimony of C. W. Robnett.)

Was that the nature of it?

A. In substance, yes, sir.

Q. That was a mere kindness on his part, a gratuity of his, was it not?

A. Well, it was nothing more than the understanding we had prior to that, that I was to get all I could out of the claims.

Q. If there was any kindness there you didn't see it, did you?

A. It was simply carrying out a friendly relation that was always existing between us.

Q. You did recognize that he did something toward you in a friendly way when he made that expression?

A. I considered it nothing more than as friends would deal, according to the understanding and agreement.

Q. Now, did you tell him anything derogatory to the kind of title the bank was getting?

A. I told him the conditions exactly, how I had bought the claims and all.

Q. You went on and told him, after patents had issued and after you had closed the deal with the entrymen long prior to that, and at a time when you was trying to make the best bargain with him on these [2079—1749] titles that you could in your own interest, you say you went on and narrated to him all this history about the invalidity of these titles, that you had violated the laws of the United States and induced these people to commit perjury, and told him all the circumstances, told him that the titles he was getting were void?

(Testimony of C. W. Robnett.)

A. Gotten under the same conditions as other claims taken up under that same nature.

Q. Why was it you narrated to Frank W. Kettenbach all that?

A. It was simply in answer to his question in regards to the title to those claims.

Q. What did he ask you about the title to those claims?

A. He wanted to know just how they were taken, and what I paid for them, and I told him.

Q. What did he ask you about how they were taken up?

A. He says, "How were these taken, who were the entrymen and how, under what conditions," and just what they cost me.

Q. You furnished him an abstract of title, didn't you? A. I did.

Q. That showed that title had issued?

A. Yes, sir.

Q. And you say that though there was a patent there in that abstract he went on to ask you about how the entrymen entered them and about what kind of arrangements they had?

A. In regards to what the claims cost me, and under what conditions the entrymen made the proof, that is, in a general way; we didn't go into all the details.

Q. He asked you all about that, did he, in the face of the fact that there was patent there? [2080—1750] A. Yes, sir.

Q. And you told him all the fraud on the part of

(Testimony of C. W. Robnett.)

those entrymen?

A. I told him the conditions exactly.

Q. That they committed perjury, and all that, did you?

Q. I told him I was to pay the entrymen whatever the price was, \$400.00 for one, and I think \$300.00 for the other, and the money was paid.

Q. You did that to help him make good terms in selling these titles to him, did you?

A. He knew the conditions under which timber claims were being secured that way by the rest of the boys there in the bank and myself; he was familiar with all those conditions.

Q. How did he come to ask you about this if he was already familiar with it?

A. He wanted to know if they was obtained the same way as the others.

Q. What do you know about what Mr. Frank W. Kettenbach knew about the way this business was done? A. Why, in conversations.

Q. He wasn't a party to any of these business transactions, was he?

A. Not to my knowledge, in regards to the boys' timber at that time.

Q. He wasn't interested in securing timber?

A. I don't know as he was; he wasn't, at least, working with the boys in regards to their claims.

Q. You never had any dealings with him in regard to timber, locating and entering timber and land and securing titles? A. No, I did not.

Q. Not a bit, did you?

(Testimony of C. W. Robnett.)

A. Not to my recollection. [2081—1751]

Q. And he wasn't in that business? You knew that, didn't you?

A. I don't know; as far as that is concerned I know that he was interested and kept pretty well posted in regards to the trend of the investigation.

Q. You knew he wasn't in that business, didn't you?

Q. Why, he wasn't in a way, but he was at the time that he took these two claims.

Q. What business was it?

A. Buying that tie timber; he was furnishing some tie contracts to the railroads, and I didn't know but what he could utilize—

Q. Which one of these claims did he have an interest in?

A. He had no interest as far as having an interest in those things, but you said about having anything to do with the timber.

Q. He had no interest in anything you have testified about, did he?

A. Nothing until the time he took them over for the bank.

Q. I am talking about a personal interest. He didn't have any interest in any claims you have testified about at any time?

A. Not to my knowledge.

Q. He didn't loan any money even for any of that business?

A. I don't know personally whether he did.

Q. I say you don't know of a case where he loaned

(Testimony of C. W. Robnett.)

any, do you, on any of those claims? Now, remember, I don't want you to testify about what you don't know personally. You were doing it just now.

A. I know, but I was just—

Q. Just name one where he had an interest.

A. I don't know as I can recall any one at the present time.

Q. Then, you don't know of a single claim where he either loaned money or where he had an interest of any nature in it, do you?

A. Well, not from him, I do not.

Q. I say that you don't know of a single claim that you have testified about in these cases here in which Frank W. Kettenbach had [2082—1752] any interest or for the securing of which he even loaned any money, do you?

A. You mean to the entrymen, or to Kester and Kettenbach?

The last question was upon request repeated by the Reporter.

A. Not unless it was money that the boys had borrowed over there at the Idaho Trust Company.

Q. Do you know of any? You say unless it was. The question is whether you know of any such claim in which he had an interest or for the securing of which he loaned any money. Answer that yes or no.

A. Personally, I do not.

Q. What do you mean when you say personally?

A. I mean only—

Q. Is that all you know? You don't know of any, do you?

(Testimony of C. W. Robnett.)

Mr. GORDON.—Mr. Babb, you asked him a question and then didn't give him a chance to answer. You asked him what he meant by personally.

Mr. BABB.—Q. That simply means that you yourself don't know of any such?

A. No, he never negotiated, had anything to do with any of the transactions.

Q. I am only questioning you personally. I am not questioning anybody else.

A. I understand that.

Q. Now, you also know that Frank W. Kettenbach was president of the Kettenbach Grain Company at that time? A. Yes, sir.

Q. Or Kettenbach Co., Limited, rather. It was transacting a very large business, wasn't it?

A. It was.

Q. And he was a pretty busy man in his own business, wasn't he? A. He was.

Q. And he didn't have much time for anything other than his own [2083—1753] business, did he?

A. I don't know; he seemed to be interested in a great many things.

Q. How is that?

A. He appeared to be interested in a great many things.

Q. Things he had his money in generally, wasn't it? A. Yes, sir.

Q. What was he pushing that he didn't have his money in?

Mr. GORDON.—I object to that. He didn't say

(Testimony of C. W. Robnett.)

he was pushing anything he didn't have money in.

Mr. BABB.—Yes, he says he was acquiring an interest in this timber business, and he has testified that he had no money in it of any nature whatsoever.

WITNESS.—I stated that he was taking an interest so far as knowing how things were going from a friendly way, if no other, and we often talked about it; we often walked up the street and talked the timber matters over.

Mr. BABB.—Q. Which Kettenbach?

A. Frank Kettenbach.

Q. When was it that you and Frank walked up the street?

A. During the times of the trials, while the trials were in process, and the investigations going on.

Q. When was that? How many times?

A. Why, I couldn't say, but a great many times we walked up in the evening. I would go down to the bank and go up about the same time he would be going up, and we would meet on the street and we would walk up, and, of course, he was interested in seeing everybody come out, and the conditions. He kept posted in regards to the testimony at the different trials.

Q. And during all those times you told him that you had not made [2084—1754] any prior agreements with any entrymen, and that you were innocent, and that these indictments were false and fraudulent, and that you were being wrongly treated by the United States Government, didn't you?

A. No, sir.

(Testimony of C. W. Robnett.)

Q. Didn't you testify on the trial of those indictments that you were innocent, that you hadn't made any prior agreements, the way you have testified here to-day? A. I may have.

Q. Yet you say you didn't talk to Frank Kettenbach that way? How does it come that you testified one way and talked to him the other?

A. Well, when I went on the stand there I wasn't on trial at that time; I went on the stand to do what I could to protect the boys.

Q. Well, then, these times that you walked up the street with Frank Kettenbach, you talked to him differently from the way you testified in the United States Court on that trial? A. Yes, sir.

Q. Didn't you testify concerning some of your own entries that you were negotiating for in your testimony at that time on the trial when you say you were testifying to protect the boys? A. I may have.

Q. Well, didn't you?

A. I think perhaps I did; I really don't know just what—

Q. Didn't you really?

A. I testified to every question that was asked me in regards to all those matters.

Q. And that testimony is different from what you have given here yesterday and to-day?

A. Yes, sir.

Q. And different from what you told Frank Kettenbach in these walks up the street with him?
[2085—1755]

A. In some respects perhaps it was, on account I

(Testimony of C. W. Robnett.)

didn't go into all the details.

Q. Those respects were pretty material respects, were they not?

A. In what,—what different features?

Q. They involved guilt or innocence, didn't they?

A. No; the transaction, the indictments in which I was principally interested those times was relative to them seeing the timber land, and they had no indictments in regards to these particular entries under discussion here.

Q. You testified though on the trial there concerning the entries you have testified about here yesterday and to-day?

A. Yes, some of them.

Q. And testified differently then from what you have testified now?

A. Yes, sir.

Q. And when you was trying to make the best bargain you could in your own interest to transfer these Waldman and Gordon claims to the Lewiston National Bank, after patent had issued, and you had secured the deeds from the entrymen, in order to help yourself make good terms with Mr. Kettenbach, the president of the bank, you told him all about the invalidity of the titles you was selling?

A. I didn't do that with the idea of trying to make a good deal, but the friendship that existed there in the whole thing, and as long as I didn't expose the proposition I didn't think the entrymen would either; I expected everything to be kept in the exact condition as had been testified to.

Q. You didn't expect at that time to expose it?

A. No, I did not.

(Testimony of C. W. Robnett.)

Q. You have changed your mind some time since about exposing it? A. I have.

Q. This change didn't take place in your mind, did it, until after you had been indicted in the United States District Court in Idaho for [2086—1756] misappropriating a large amount of funds of the Lewiston National Bank?

A. I decline to answer that question.

Q. Why is it that you decline?

A. Well, it is liable to lead on to other questions that is matters at issue, not connected with this case at all.

Q. Well, what if it does lead on to them, what is your objection to leading on to them?

A. A constitutional privilege that anything that is apt in any way to incriminate me or that is apt to come to trial later on.

Q. Oh, the ground is, you object because you are under indictment concerning a violation of the National banking laws?

A. Yes, sir; I am under indictment with Mr. Frank W. Kettenbach and Mr. Kester and Mr. Will Kettenbach.

Q. And to protect yourself on the trial of that indictment, or those indictments, whatever they are, you claim this privilege? A. Yes, sir.

Q. Well, you didn't change your mind about making that information you was giving Frank Kettenbach public until after the date those indictments were filed, did you?

(No answer.)

(Testimony of C. W. Robnett.)

Q. It was since those indictments were filed that you changed your mind about making this matter public?

A. I think that comes under the same reason, objecting that I don't think I would be compelled to answer that question. [2087—1757]

Q. Now, you testified about your deposit boxes in the Lewiston National Bank. How many did you have, or did you have more than one? A. Two.

Q. What kind of boxes were those?

A. One of them was— They were both tin or iron boxes, movable boxes, and one had the name "C. W. Robnett" painted on it, and the other had simply "C. W. R." on it. One had a Yale lock on it, and the other only had a common lock. One cost \$5.00 and the other only a dollar or a dollar and a quarter.

Q. What do you mean by the cost?

A. Well, that is what they cost. There is a difference in the boxes. The boxes were not just the same; one was a better box than the other.

Q. Is that what the bank paid for the boxes?

A. I bought the boxes; they were individual property; they were not property of the bank at all.

Q. Well, who did you buy them of?

A. I bought the box that cost me \$5.00 from Curtis Thatcher, of Thatcher & Kling.

Q. When?

A. Oh, perhaps 1903, somewhere right along there, maybe a little earlier.

Q. Where were those boxes kept in the bank?

A. On the shelves in the vault.

(Testimony of C. W. Robnett.)

Q. Were there any other similar boxes?

A. A great many.

Q. Near by them? A. Yes, sir.

Q. They looked just like the most of the safety deposit boxes in the bank there, didn't they?

A. The same as you can buy in any of these hardware stores.

Q. Well, I say, they looked like the most of the safety deposit [2088—1758] boxes that the bank had there in which customers of the bank placed their valuables?

A. Well, not boxes that were owned by the bank, but boxes that the customers brought in and left in the vaults. These were different boxes from the regular boxes installed by the bank.

Q. They looked more like the boxes that customers brought in there?

A. Yes, sir; they were the same as those.

Q. But they were kept right there, were they not, where all the safety deposit boxes of the bank were?

A. Why, on the shelves there. There were others that were stationary in there; they had places for them; but these others were on the shelves.

Q. You didn't pay a safety deposit rental to the bank?

A. No, sir, nor nobody else for those boxes.

Q. You didn't? A. No, sir.

Q. Was there any rentals paid for any boxes there?

A. Why, not to my knowledge; but those others were not installed anyway until later on, that is when the Idaho Trust Company moved over there and put

(Testimony of C. W. Robnett.)

in their safety deposit boxes.

Q. You don't know of anybody paying for the boxes there?

A. No, sir, there wasn't anybody paid to my knowledge.

Q. And that service was furnished just as a gratuity?

A. Yes, sir, to anybody that wanted to have private papers that they wanted to keep in the vault.

Q. Now, what was the difference between those boxes? Did you keep a different kind of matter in one to what you did in the other?

A. No; I just kept them—no different kind of transactions was kept in both of them; just whichever I happened to have down at the time I had the transaction I would put it in.

Q. There was a lock on one and not on the other?
[2089—1759]

A. There was locks on both of them; one of them was a stronger lock, and the other was a cheap lock.

Q. Now, what class of matter did you keep in those boxes?

A. My private papers and the plats and other papers relative to timber transactions, and some checks and one thing and another.

Q. What class of checks?

A. The checks that were relative to transactions of timber, and some personal, and other business which I was interested in.

Q. You was bookkeeper of the Lewiston National Bank at that time? A. I was.

(Testimony of C. W. Robnett.)

Q. And interested in other businesses, you say?

A. Yes, sir.

Q. At the same time? A. Yes, sir.

Q. What other businesses?

A. The timber business.

Q. Is that all?

A. No. There was the Spokane Orchards.

Q. Is that all?

A. Some mining interests.

Q. Where were those mining interests, and what were they? A. Why, in the Elk City District.

Q. What mining interests there?

Mr. GORDON.—I object to that on the ground that there was nothing inquired into about that on the examination in chief, and it is not proper cross-examination.

WITNESS.—I don't know that I would be compelled to answer that question.

Mr. BABB.—Q. What were the names of the claims and who were your partners, if any? [2090—1760] A. I decline to answer.

Q. Why do you decline to answer that?

A. Well, it leads to a proposition, to other matters that isn't relative to the matter under consideration.

Q. Well, that is no ground—that it just leads to other matters.

A. Well, it may lead on to matters that—

Q. —that might show where some of the money of the bank went that you are charged with having misappropriated?

Mr. GORDON.—I object to that—

(Testimony of C. W. Robnett.)

Mr. BABB.—Q. Is that the ground that you claim your privilege on; that it may incriminate you in the matter of a violation of the National banking laws?

A. It may.

Q. Is that it? A. It may.

Q. Where else did you have mining interests?

A. That's all—why, only a little interest in Coeur d'Alene.

Q. Didn't you send some fellow down to Mexico once on a mining expedition? A. No.

Q. You put up some money for it?

A. I loaned a fellow some money.

Q. You loaned them some money? A. Yes, sir.

Q. You was taking an interest in a mining scheme down there, wasn't you? A. No, sir.

Q. You investigated it?

Mr. GORDON.—I object to that, on the ground that it is not proper cross-examination. The matter as to which inquiry is being made was [2091—1761] not gone into in the examination in chief, and it is irrelevant, incompetent and immaterial.

WITNESS.—I didn't investigate it, no more than he had made reports on it, or on Mexico in general. I didn't know but what I might be interested in it in time.

Mr. BABB.—Q. What was the name of this Mexican? A. Senor Borneo.

Q. Senor Borneo? A. Yes, sir.

Q. How much money did you spend on that thing?

Mr. GORDON.—The same objection will run to all this class of questions.

(Testimony of C. W. Robnett.)

WITNESS.—I think I loaned him perhaps \$30.00 or \$40.00.

Mr. BABB.—Q. That is all you spent on that thing? A. Yes, sir.

Q. Then, wasn't you interested in a mining scheme up in Alaska?

A. I have got a little stock in a mine up there.

Q. What? A. A little stock in a mine up there.

Q. What was the name of that corporation or project?

A. I don't recall. The stock didn't cost me anything.

Q. Did you spend any money on that project?

A. No, sir.

Q. Did you see a man named Kelsey, connected with that project?

A. No, sir, not to my knowledge.

Q. Not in any way? What was the name of somebody connected with that?

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination.

WITNESS.—I decline to go into that any further.
[2092—1762]

Mr. BABB.—Q. On the ground that that might incriminate you in connection with charges pending against you for a violation of the National banking laws? A. It might.

Q. Didn't you also have an iron ore project over in Idaho? A. Where?

Q. In Idaho—an iron ore project?

A. Not to my recollection.

(Testimony of C. W. Robnett.)

Q. What was the mineral scheme you had with Joe Schultz's brother? I don't know his name.

A. Dan. Schultz?

Q. Yes. A. Asbestos.

Q. Oh—asbestos? That's right. Where was that?

A. On the Lolo.

Q. How much money did you spend in there?

A. I don't remember—a few dollars.

Q. As much as \$10.00, do you think?

A. Oh, maybe as much as \$40.00.

Q. You don't think it exceeded \$40.00?

A. No, I don't think it did—\$40.00 or \$50.00.

Q. Then, the Spokane Orchards, you mentioned some project of that kind; what was there as to that?

A. I decline to make any statements in regards to the Spokane Orchards.

Q. Was that an irrigation scheme? A. It was.

Q. The scheme was large in its extent, wasn't it?

A. It might have been.

Q. When was that going on?

Mr. GORDON.—I object— [2093—1763]

WITNESS.—I decline—

Mr. GORDON.—I wish to make an objection here, on the ground that it is not proper cross-examination, and the matters inquired of were not gone into in the examination in chief.

Mr. BABB.—Q. You decline for the reason that it might incriminate you in the matter of charges for a violation of the National banking laws?

A. Yes, sir.

Q. You had a thermal or hot-water project over in

(Testimony of C. W. Robnett.)

Oregon, didn't you, somewhere? A. Yes, sir.

Q. What place? A. Vale.

Q. About what time was that going on?

A. Along in the summer of 1907.

Q. And then you had a land and irrigation scheme there, too, didn't you? A. Yes, sir.

Q. Was that about the same time? A. Yes, sir.

Q. How much money did you spend in that thing?

A. I decline to answer.

Q. For the same reasons given heretofore?

A. Yes, sir.

Q. Then, wasn't you in a farming and livestock business—

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination.

Mr. BABB.—Q. —up in Nez Perce or Idaho County, or a project of some degree of development or prospect?

A. No; I wasn't interested in it no more than I assisted a party with a small amount of money.
[2094—1764]

Q. How much did you spend in that thing?

A. I decline to answer.

Q. For the reasons given heretofore?

A. Yes, sir.

Q. Now, give a complete itemized list of everything that was in those boxes in the bank.

A. I don't know as I can.

Q. Didn't you have a mining project over in Montana?

Mr. GORDON.—Objected to on the ground that

(Testimony of C. W. Robnett.)

it is not proper cross-examination, and the matter was not inquired of of the witness in the examination-in-chief, and it is incompetent, irrelevant and immaterial.

WITNESS.—No, sir.

Mr. BABB.—Q. You have now, haven't you?

A. No, sir.

Q. You have had an interest in one over there?

A. A mining proposition?

Q. Yes—a land proposition, or any other kind of a proposition over there?

Mr. GORDON.—I object to that, as it is not a proper question to ask, and it is not proper cross-examination.

WITNESS.—I was interested in trying to promote a proposition over there.

Mr. BABB.—Q. Well, let's see—Columbia Falls?

A. Columbia Falls, yes, sir.

Q. What was that proposition?

A. Well, it was a proposition of trying to place a certain amount of land under irrigation, and there was nothing done with it.

Q. Well, now, you have mentioned here a great many projects that you have been interested in, in addition to those which you stated were all your interests outside of the bank, as I have mentioned them to you from time to time, and I will ask you in a general way now if I have refreshed [2095—1765] your recollection in any way that will enable you to tell any other projects in addition to those which I have called your attention to, which you

(Testimony of C. W. Robnett.)

did not remember in the first instance?

A. No, sir, I don't recall any.

Q. You don't recall anything now other than those you mentioned yourself and those that I have brought to your attention? A. No, sir.

Q. That you have ever had any money invested in? A. No, sir.

Q. In any way, at any time? A. No, sir.

Q. Now, I will ask you to give a complete list of the matters as near as you can that you had in those boxes at Lewiston, in the Lewiston National Bank the last time you ever examined them.

A. I decline to do so.

Q. Well, you didn't decline when the counsel for the Government here asked you.

A. Well, I mentioned those items that I spoke of, but beyond that I decline to give a complete statement. Those that I mentioned, of course, I told.

Q. You decline to mention any items other than those you mentioned in response to the counsel for the Government? A. Yes, sir.

Q. How does it come that you are not afraid of incriminating yourself in your responses to the Government as much as your responses to the defense?

A. Well, there were other items that I don't care to mention at this time, and I claim my constitutional privilege.

Q. You will do things for the Government, then, that you would not do for the defense in testifying?

A. I would not have made those statements for the Government at the present time. [2096—1766]

(Testimony of C. W. Robnett.)

Q. Which statements?

A. Those mentioning the other.

Q. The other items in there?

A. The other items, or the amounts in different transactions which I have refused to answer.

Q. Well, I won't ask you, then. Well, I won't waive the question I put—I rely on it—but I will ask you in addition now to mention some items in there. There were certainly some in there that would not implicate you, wasn't there, besides those that the Government mentioned?

A. Why, there might be, but I don't recall all that was in there.

Q. Well, can't you think of a single item in there besides what the Government mentioned that would not incriminate you?

A. Oh, there was perhaps a good many in there, but I don't recall just what they were.

Q. Well, just take a little time, now, and collect your thoughts, and see whether there was a single item in those boxes besides what the Government asked you about that you think would not incriminate you that you can tell about.

A. I don't recall any.

Q. Were the boxes pretty well filled?

A. Yes, sir.

Q. Well, you told the Government here in your direct examination that you had a lot of your personal papers in there? A. Yes, sir.

Q. Pertaining to your personal business transactions? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Such as checks and drafts—

A. I didn't mention any drafts.

Q. —and other matters?

(No further answer.)

Q. Well, now, everything that was in there was your personal [2097—1767] papers, was it?

A. Yes, sir,—

Q. And having mentioned those for the Government—

A. —as far as I recall at the present time.

Q. And having mentioned those for the Government, then I presume you are willing to testify concerning those that were your personal papers for the defendants, are you not?

A. Not at the present time. I decline to make any further statement in regards to the balance of the papers.

Q. I will ask you if you remember whether there was a draft in one of those boxes, on the Continental National Bank—a draft of the Lewiston National Bank on the Continental National Bank of Chicago, in your handwriting except the signature, drawn originally for \$5.00, and raised in your handwriting to \$5,000.00?

Mr. GORDON.—Objected to on the ground—

Mr. BABB.—Q. —which had been paid, and was returned to the Lewiston National Bank?

Mr. GORDON.—Objected to on the ground that it is not proper cross-examination, the matter not having been gone into on the examination-in-chief.

WITNESS.—I don't know as there was.

(Testimony of C. W. Robnett.)

Mr. BABB.—Q. You don't know whether there was or not?

A. I don't remember anything about it.

Q. Do you remember of there ever being such a draft as that? A. I decline to answer.

Q. For the same reasons stated above?

A. Yes, sir.

Q. You say you don't remember whether there was such a draft as that in the boxes, or either of those boxes?

A. I don't recollect. [2098—1768]

Q. The proper place for that draft would be in the vaults of the bank, wouldn't it?

A. I presume so.

Q. It would belong to them, wouldn't it, if it had been drawn in their name and sent out of their money paid out of their account by the Continental National Bank, it would belong to the Lewiston National, wouldn't it?

A. It would belong with the cancelled vouchers, yes, sir.

Q. It wouldn't belong in that box of yours, would it? A. No, sir.

Q. You say you can't remember whether there was any such a draft as that in existence?

A. I don't recall whether there was such a draft as that in there or not.

Q. And you don't recall whether there was such a draft, either, as I understand you?

A. I decline to answer.

Q. You decline to answer that? A. Yes.

(Testimony of C. W. Robnett.)

Q. Why? Because that might incriminate you in connection with these charges of a violation of the National banking laws? A. It might.

Q. I will ask you if there was in either one of those boxes a telegram from the Continental National Bank to the Lewiston National Bank, asking in what amount they should pay that draft?

A. I don't know as there was.

Q. Did you ever see such a telegram?

A. I decline to answer.

Q. And for the same reasons you have stated before? A. Yes, sir.

Q. You say you don't know whether there was such a telegram in one of those boxes? [2099—1769] A. No, sir, I don't.

Q. Did you ever see a telegram that was sent to the Continental National Bank in answer to such a telegram? A. I decline to answer.

Q. For the same reasons? A. Yes, sir.

Q. Did you ever talk with any banker in Spokane over the phone concerning that draft?

Mr. GORDON.—I make the same objection.

WITNESS.—Not to my recollection.

Mr. BABB.—Q. Did any banker in Spokane ever talk with anyone else in the Lewiston National Bank over the phone about that draft?

A. I decline to answer.

Q. For the same reasons? A. Yes, sir.

Q. Did that draft pertain to these land transactions? A. I decline to answer.

Q. Now, you answered in chief here concerning

(Testimony of C. W. Robnett.)

checks and drafts and things in there pertaining to these land transactions, didn't you?

A. I did, sir.

Q. Well, now, I simply ask you whether this draft had anything to do with these land transactions?

A. I decline to answer.

Q. For the same reason given before?

A. Yes, sir.

Q. I will ask you if there was either one of those boxes a draft of the Lewiston National Bank for \$5,000.00, drawn in favor of J. D. Gulick?

A. Not to my recollection.

Q. Do you know whether there was ever such a draft as that?

A. I decline to answer. [2100—1770]

Q. For the same reason given above?

A. Yes, sir.

Q. If there was such a draft, it belonged in the vaults of the Lewiston National Bank rather than your private box, didn't it?

A. It belonged among the cancelled drafts after they were returned, if there was such a draft.

Q. Did that draft pertain to these land transactions, or to the Spokane Orchards, or what?

A. I decline to make any statement.

Q. For the same reasons as given above?

A. Yes.

Q. You spent a good deal of your time in Spokane, didn't you, along in '07 and '08?

Mr. GORDON.—The same objection.

WITNESS.—I decline to answer.

(Testimony of C. W. Robnett.)

Mr. BABB.—Q. Didn't you change your residence, really, to Spokane, during one of those years?

A. I decline—

Q. Or early in '09?

(No answer.)

Q. Didn't you acquire a residence here, with an automobile barn that cost you about \$10,000.00 to \$15,000.00? A. I decline to answer.

Q. In '07 or '08? A. I decline to answer.

Q. How much did you spend on this Spokane Orchards project? A. I decline to answer.

Mr. GORDON.—The same objection.

Mr. BABB.—Q. Well, now, you told me the amounts as near as you could remember them of several of these mining projects, one of \$30.00 and another [2101—1771] of \$40.00. Do you think that this might incriminate you—this answer concerning the Spokane Orchards project, whereas the others might not? A. I decline to answer.

Q. I will ask you to state whether you did not, on the 22d of April, 1909, make a statement in writing showing the sum of \$91,715—

A. I decline to answer.

Q. —that you had taken from the funds of the Lewiston National Bank and invested in the Spokane Orchards project, giving the various projects in which you had invested it, and the amounts respectively? A. I decline to answer.

Mr. GORDON.—The same objection.

Mr. BABB.—That is all I have.

Mr. TANNAHILL.—Q. Mr. Robnett, where are

(Testimony of C. W. Robnett.)

you living at the present time?

A. Spokane.

Q. How long have you lived in Spokane?

A. Since about the middle of March of this year.

Q. And where did you live prior to that time?

A. Lewiston, Idaho.

Q. How long did you live there?

A. About 18 years.

Q. What caused you to change your residence from Lewiston to Spokane? A. Business.

Q. What class of business were you engaged in?

A. I wasn't engaged particularly in any business when I came up here. I am in the real estate business now.

Q. What class of real estate do you handle?

A. Why, city—county—all kinds.

Q. Is there any particular real estate business you are handling now? [2102—1772]

A. Yes, sir.

Q. What business? What real estate?

A. Why, city property, on a commission basis; country farms; a regular general real estate business.

Q. Have you been interested in any real estate as owner since you came up here? A. No, sir.

Q. Was you before you came up here?

A. Yes, sir.

Q. What real estate? What business? What lands? A. I decline to answer.

Q. What reason do you give for declining to answer?

(Testimony of C. W. Robnett.)

A. For it might lead on to matters to incriminate.

Q. You think you would be liable to incriminate yourself by telling what real estate you have been interested in since you have been in Spokane?

A. Not this last time, no, sir.

Q. Well, that is what I asked you about.

A. You asked me prior to my coming up here.

Q. Well, I am asking you now since you moved up here?

A. I haven't been interested in any since, as owner.

Q. You haven't been interested in any since you moved up here?

A. That is, any new real estate investment.

Q. Well, what real estate was you interested in before you moved up here to Spokane?

A. I decline to answer.

Q. Was you interested in any real estate before you moved to Spokane? A. I decline.

Q. Now, about what date was it you moved to Spokane?

A. Somewheres along about the middle of the month of March of this year. [2103—1773]

Q. Of 1910? A. Yes, sir.

Q. Now, you put in a great deal of time in Spokane before you moved up here, did you not?

A. I decline to answer.

Q. And where was you before you moved to Spokane? A. My home was in Lewiston.

Q. Well, where was you personally during this time? A. In different places.

(Testimony of C. W. Robnett.)

Q. Mention some of them.

A. I decline to make any mention of all the places.

Q. You decline to mention where you was? You decline to mention where you was from July, 1907, to March, 1910, the time you moved to Spokane?

A. Do I decline, you say?

Q. Yes. A. Yes, I decline.

Q. Now, Mr. Robnett, you testified in the case of the United States against William F. Kettenbach, George H. Kester and William Dwyer, numbered 1605, Circuit Court of Appeals number, wherein they were tried in the month of May and June, 1907, charged with conspiracy to defraud the United States, in which was involved the identical lands that is involved in this controversy, did you not?

A. Yes, sir.

Q. And you gave your evidence at that time, and it was as a witness for the defendants?

A. I did.

Q. And did you testify more than once?

A. For the defendants?

Q. Yes.

Mr. GORDON.—You mean at more than one trial?

Mr. TANNAHILL.—Yes, at more than one trial?
[2104—1774]

WITNESS.—No; just the one trial at Moscow.

Q. You were tried yourself at one trial in Moscow? A. Yes, sir.

C. And you was convicted of the offense of subornation of perjury, was you not? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. And that was immediately prior to the time, or that was at a term of court immediately prior to the time that you testified for the defendants, in the case of the United States against Kester and Kettenbach and Dwyer, was it not? A. Yes, sir.

Q. And I believe you testified, in response to Mr. Babb's questions, that your evidence given at that trial was almost directly opposite to the evidence you are giving now, and given upon this trial?

A. Yes, sir.

Q. Now, when did you conclude to change your evidence? A. I decline to answer.

Q. You decline to answer that question?

A. Yes, sir.

Q. And who has told you to decline to answer that question?

A. No one has told me to decline to answer that particular question.

Q. No one has told you to decline to answer any particular question?

A. Not that particular question. Miles Johnson, my attorney in the bank matter, has told me to decline.

Q. And Miles Johnson is also Assistant United States Attorney, is he not? A. No, sir.

Q. He has been?

A. He may have been at times, yes, sir.

Q. And he assisted Mr. Gordon in the prosecution of the defendants [2105—1775] at Boise, and when this case was retried at which you said you testified as a witness for the defendants, which was tried in March, 1910, did he not?

(Testimony of C. W. Robnett.)

A. Yes, he assisted in the case.

Q. And was entered as counsel in that case?

A. Yes, sir.

Q. And at that particular time he was your attorney?
A. In the bank matter.

Q. In the bank matter, and in which you was charged with appropriating a large sum of money from the Lewiston National Bank?

A. I decline to answer.

Q. Well, you have said that you was under indictment?
A. Yes, sir.

Q. You have already testified to that?

A. Yes, sir.

Q. And it is that particular indictment that Miles Johnson is your attorney in, is it not?

A. Yes, sir.

Q. And did Miles Johnson tell you to decline to answer any questions relative to any reason why you changed your evidence and concluded to testify for the Government?

A. Anything that could refer to the bank matter, or any other reason.

Q. Then, by reason of the fact that you concluded to change your evidence from what you gave it in the former trial of the defendants, William F. Kettenbach, George H. Kester and William Dwyer—that has relation to the bank matters, has it not?

A. As I have testified in Boise. I answer that question as I answered it in Boise.

Q. Answer it again.

A. I agreed to come over and testify for the Gov-

(Testimony of C. W. Robnett.)

ernment to the facts in the case provided the matter relative to the bank was given an [2106—1776] impartial presentation before the grand jury at Moscow.

Q. And you wanted it presented to the grand jury your way?

A. No, not in my way; I wanted it presented in a way that was impartial.

Q. And you wanted the opportunity to go before the grand jury and testify, didn't you?

A. Yes, sir.

Q. And that was one of the conditions?

A. Yes, sir.

Q. And you knew at that time that it would invalidate any indictment against you, didn't you?

A. No, sir, I didn't, and I don't know that it would.

Q. Now, you also wanted as one of the conditions that Mr. Gordon would indict Kester and Kettenbach and Frank W. Kettenbach, wasn't it?

A. That he would indict them?

Q. Yes.

A. No; there was nothing of the kind. I didn't know whether they would be indicted or not. I couldn't tell what the grand jury was going to do.

Q. Well, you knew pretty well what the grand jury was going to do, didn't you?

A. No, sir, I didn't; I had no idea what the grand jury was going to do.

Q. Well, you had no idea that you would be indicted, did you?

A. I didn't know but what I might.

(Testimony of C. W. Robnett.)

Q. You had already been bound over, hadn't you?

A. Yes, sir.

Q. And on a complaint sworn to by Frank W. Kettenbach? A. Yes, sir.

Mr. GORDON.—I object to that. The record will show that.

Mr. TANNAHILL.—Q. And Frank W. Kettenbach and William F. Kettenbach were very [2107—1777] much interested in your prosecution, weren't they? A. They appeared to be.

Q. And one of the conditions that would induce you to testify for the Government and induce you to change your evidence from what it was before, was that Frank W. Kettenbach and William F. Kettenbach (who were prosecuting you for embezzling a large sum of money from the Lewiston National Bank) would be indicted also?

A. Why, I never specified it that way, sir.

Q. Well, that is in effect what you wanted, isn't it?

A. I wanted the matter presented impartially.

Q. And your theory of it was, and your opinion and belief was, that you could succeed in getting these men indicted, wasn't it?

A. If there was any indictments found.

Q. If you was indicted, you wanted them indicted, too? Is that right? A. Yes, sir.

Q. And you knew that if you could succeed in getting William F. Kettenbach, Frank W. Kettenbach and George H. Kester indicted, that you would have an easier defense, didn't you?

A. I don't know about that.

(Testimony of C. W. Robnett.)

Q. Now, do you wish to be understood as swearing that you didn't think that?

A. I wasn't going to—all I wanted was an impartial presentation of the facts.

Q. Now, Clarence, answer my question, and tell the truth about it; come through with it.

A. Well, I have told you the facts, that I wanted an impartial presentation of the matter.

Q. Now, you knew very well that if you could get Kester and Kettenbach and Frank W. Kettenbach indicted with you that it would be easier for you to make a defense, didn't you?

A. Well, I wouldn't have to stand alone. [2108—1778]

Q. Well, it would be easier for you to make your defense; is that right? A. I presume so.

Q. And then that was one of the conditions under which you made your promise to go over and testify for the Government; is that right?

A. An impartial presentation of the matter before the grand jury.

Q. Yes—and that Kester and Kettenbach and Frank W. Kettenbach would be indicted?

A. No; there wasn't any mention made of those people being indicted.

Q. But it was your intention to have them indicted when you was talking about changing your evidence, wasn't it?

A. Well, if the grand jury seen that way about it, yes.

Q. Yes, and you proposed to place the case in such

(Testimony of C. W. Robnett.)

a way and be in such a condition yourself that the grand jury would indict them, didn't you?

A. I didn't know what the grand jury would do.

Q. Well, but you know what you expected them to do, don't you?

A. I expected them to deal with the facts as they were.

Q. And you expected them to indict them, didn't you? A. If they indicted me.

Q. Well, you expected to be indicted yourself, didn't you? A. I didn't know.

Q. Now, didn't you know that you would be indicted?

A. Why, it was very evident that I would.

Q. And didn't you testify before the grand jury yourself?

A. I decline to go any further in regards to that.

Q. Well, you was before the grand jury, wasn't you?

A. I decline to make any further statements in regards to it.

Q. Now, it was one of the understandings with the prosecuting officers in charge of this case, that you would be permitted to go before the grand jury and testify, wasn't it? [2109—1779]

A. Well, that is what I asked for.

Q. That is what you asked for? A. Yes, sir.

Q. And they told you that they would see that you got it; is that right?

A. They would see what could be done.

Q. Well, you did go before the grand jury and tes-

(Testimony of C. W. Robnett.)

tify, and succeeded in having Frank W. Kettenbach and George H. Kester and Will Kettenbach indicted, before you testified for the Government, didn't you, at Boise?

A. They were indicted; I don't know whether I did it or not.

Q. And your evidence helped to indict them; you know that, don't you? A. Perhaps.

Q. And that was pursuant to your understanding and arrangement with the prosecuting officers; is that right?

Mr. GORDON.—Make that a little clearer, will you? What was the understanding, Mr. Tannahill?

WITNESS.—Read that question over.

The Reporter repeated as follows:

“Q. Well, you did go before the grand jury and testify, and succeeded in having Frank W. Kettenbach and George H. Kester and Will Kettenbach indicted, before you testified for the Government, didn't you, at Boise?

“A. They were indicted; I don't know whether I did it or not.

“Q. And your evidence helped to indict them; you know that, don't you?

“A. Perhaps.

“Q. And that was pursuant to your understanding and arrangement with the prosecuting officers; is that right?”

WITNESS.—That they should be indicted?

Mr. TANNAHILL.—No; that you would go before the grand jury and [2110—1730] present your evidence to the grand jury? A. Yes.

(Testimony of C. W. Robnett.)

Q. Now, then, they also took you into consultation and asked you about what sort or class of evidence you would give, didn't they, before they made you this promise? A. No, sir.

Q. How? A. No, sir.

Q. They didn't talk about what kind of evidence you would give against these men in the land cases?

A. No, sir.

Q. Never said anything about it at all?

A. No, sir, any more than to ask me if I would testify.

Q. They asked you if you would testify?

A. Yes, sir.

Q. Who asked you if you would testify?

A. Mr. Watts.

Q. Now, when was the first conversation you had with Mr. Watt regarding it?

A. It was in—well, I presume along about the 8th to the 10th of July.

Q. Where was that conversation held?

A. One conversation was held in the room—one room in the Lindell Block on the third floor, and also in a room in the Halliday Hotel.

Q. This is the same Mr. Watt who is an officer of the Government and assisting Mr. Gordon in the trial of these cases, is he not? A. Yes, sir.

Q. How did you come to meet him?

A. He hunted me up.

Q. He hunted you up? A. Yes, sir.

Q. How did you first know that he was hunting you? [2111—1781]

(Testimony of C. W. Robnett.)

A. Why, he called at the office while I was out, and stated that he would call again.

Q. Was you there at that time?

A. I wasn't there when he first came in. He came back again while I was out again, and he was there when I came back the second time.

Q. What did he have to say then?

A. He said he wanted to talk with me, and have a little private conversation, and I told him he would have to state his business before I would talk with him.

Q. And what did he say?

A. He came across the room to where I was sitting and said he was a Government Special Agent, and he would like to talk to me in regards to the timber matter. I told him that I would meet him and talk with him at any time. He wanted me to meet him that evening, but I told him that I couldn't, that I had other arrangements for the evening.

Q. What else did he say?

A. And the arrangements for the meeting were made for the next morning, either nine or ten o'clock, at the Halliday Hotel, that being Sunday.

Q. What was said in that conversation?

A. Why, he stated that the Government would like to have me testify for them and tell them the facts as I knew them in regards to the timber transactions; that they were going to open up the cases and try them.

Q. Well, what else was said?

A. I don't know what all took place, but we talked backwards and forwards, and I told him I would let

(Testimony of C. W. Robnett.)

him know what I would do on my return from Montana.

Q. Now, how long were you with Mr. Watt at that time?

A. Oh, perhaps in the neighborhood of an hour and a half.

Q. Was there anything else? You certainly talked about something [2112—1782] else. You certainly had some other conversation regarding this matter in that time.

A. Well, we talked in regards to other matters, and general conversation. I told him that I would make no statements in regards to what I would do until I returned, and I would meet him then in Lewiston, somewheres about the 17th or 18th of the month.

Q. Now, then, in that conversation Mr. Watt wanted to know if you wasn't indicted on a number of counts in relation to timber transactions, did he not?

A. Yes; he spoke about certain transactions—certain indictments pending against me, and I told him I didn't have any fears of the timber transaction.

Q. And he asked you if you was not also indicted in relation to the bank matters, too, did he not?

A. Indicted?

Q. Or, no; he wanted to know if you were not under arrest, or under charge—if a complaint wasn't filed against you in relation to the bank matters?

A. There was some mention made of the bank matters.

Q. And you told him that you was? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Now, didn't he say that you are credited with knowing a great many things different from what you testified? A. Yes, sir.

Mr. GORDON.—Now, that referred to the former cases, did it?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—It referred to the former conspiracy case, you are referring to now?

Mr. TANNAHILL.—Yes, the timber matter.

Q. Now, tell us something else that was said in that conversation.

A. I told him that it might be true that I knew a great deal [2113—1783] more than I stated, but I wasn't at liberty and wouldn't make any statement at that time, until my return from Columbia Falls, and I would take the matter up with a friend and see what he would advise.

Q. Well, now, when Mr. Watt first began to talk to you, or suggest to you that he wanted to have a conversation with you, didn't you tell him that you wanted to know something about what protection you was going to have if you talked to him?

A. I asked him that question, what proposition or condition that the Government could make on a thing of that kind, or whether it would be permissible, and he said it was not.

Q. Well, now, he told you in the first instance that you are accused of certain matters in relation to the bank transactions? He told you that; he made the first suggestion that you was accused?

A. Yes; he knew that.

Q. And didn't he say to you there, "You are not

(Testimony of C. W. Robnett.)

going to stay with these boys now that they have thrown you down," did he not?

A. Why, he stated that he didn't see why I should. I told him that I wasn't just at the present time—

Q. Well, just tell us what was said about that.

A. He wanted to know if I was going to still stay with them, and I told him I didn't know, I couldn't say, I hadn't made up my mind to do anything else, and that I would if I decided anything further or changed my attitude that I would let him know.

Q. Now, do you think of anything else that occurred there at that time?

A. No, not at that conversation.

Q. Well, didn't he tell you that he was not in a position to tell you what protection you would have or he was able to give you, but that he would investigate and see?

A. No; he stated that he was not in any position to do that, but before I made up my mind what to do to consult an attorney and act under his advice.
[2114—1784]

Q. Now, who did he tell you to consult?

A. He didn't tell me to consult anybody.

Q. Now, didn't you ask him what position it would place you in relation to the bank matters, in case you testified for the Government in the land matters, in that conversation?

A. Yes, I may have asked him that question.

Q. And what did he tell you?

A. Why, he told me it would be—it might lead to where there could be—where the matter could be pre-

(Testimony of C. W. Robnett.)

sented in a different way, and I could go before the grand jury and tell my testimony—or evidence.

Q. And he told you that he would consider, too, did he not? A. He would consider what?

Q. He would consider the question of the position that you would be placed in—what he could do for you in the meantime?

A. No, I don't know as he did. He said he wasn't in any position to state what could be done at all, but for me to consult some attorney and act under his advice.

Q. Well, now then, he told you that he was a representative of the Department of Justice, did he not?

A. He did—a Special Agent.

Q. And he told you there there were people above him that he would have to report to?

A. I don't know as he stated that at that time.

Q. Well, he told you that there were people above him?

A. Oh, yes; he said—I knew that there were people above him.

Q. And when you asked him about this protection that you wanted, he told you that he would take that matter up and see what could be done, did he not? A. Of protection?

Q. Yes.

A. Oh, he said the Government couldn't grant—wasn't in any position to offer any protection.
[2115—1785]

Q. Well, he told you that he would take that matter up when you had decided what you would do, did he not? A. The matter of protection?

(Testimony of C. W. Robnett.)

Q. Yes.

A. No, he didn't. The only protection—the only thing I asked—that is, I asked if there was such a thing as that could be made, and he said there could not, and then I told him that I might come over on the grounds of having an impartial presentation of the matter before the grand jury.

Q. Well, now, did you not testify at Boise, on the trial of Kester, Kettenbach and Dwyer: “Did he say anything about his being able to get authority to make a statement that was binding on the Department of Justice?” “Answer. He said he would take that matter up with me again when I decided what I would do.” Now, didn't you so testify?

A. I thought you meant he was going to take it up with somebody else.

Q. No—he was going to take it up with you again?

A. Well, he said he would talk with me in regards to that when I made up my mind what I was going to do.

Q. Now, did this protection you was talking about relate to the land matters, or did it relate to the bank matters? A. What?

Q. This protection that you was talking about that you wanted, did that relate to the land matters, or did it relate to the bank matters?

A. It related to the bank matters.

Q. You wasn't afraid of any transactions in relation to the land matters, were you?

A. No, not at that time.

Q. Now, when did you have another conversation

(Testimony of C. W. Robnett.)

with Mr. Watt, or Mr. Smith, or anyone else, regarding it?

A. About the 17th or 18th of July. [2116—1786]

Q. And where did that conversation take place?

A. In one of the rooms of the Weisgerber building.

Q. First, Mr. Robnett, in this conversation with Mr. Watt, isn't it a fact that Mr. Watt told you that he was looking for you, and that the Government wanted you, and wanted you bad?

A. He said he was looking for me, and that the Government would like to have my testimony.

Q. Well, didn't he say they wanted you, and wanted you bad—wanted you and wanted you bad?

A. I don't know that he used that word "bad." He said they would like my testimony very much; they needed it.

Q. They needed it in their business, eh?

A. Well, they needed it to bring out the facts in the timber matter.

Q. Now, you do remember of his saying that the Government needed you and need you bad?

A. I don't remember his using the word "bad."

Q. But he did say they wanted you; is that right?

A. Yes; he said they would like to have my evidence.

Q. And what did he say they were willing to do to get it?

A. Why, he didn't say that they was willing to do anything, only I asked him the question, as I stated before, I asked in regards to if any protection could be granted, and he said no, there couldn't; that the

(Testimony of C. W. Robnett.)

Government couldn't enter into any agreement of that kind.

Q. Well, he didn't tell you that you would receive any favors, or anything of that kind, did he?

A. No, I don't know that he said I wouldn't. He said they couldn't entertain any agreement, and they couldn't hold out any inducement.

Q. The fact of the matter is you know that if the prosecuting officers wanted to favor you they could, and you knew that then?

A. Well, I don't know. They might and they might not. There [2117—1787] was nothing binding.

Q. And you knew if the officers wanted to dismiss those charges against you they could do it?

A. Why, it is in their jurisdiction, I presume.

Q. And you were simply sparring to see what kind of protection you could get, wasn't you?

A. Why, that's natural.

Q. And you was driving the very best bargain with the Government you could, wasn't you?

A. Why, I don't know.

Q. Well, it was a business proposition with you, wasn't it?

A. It might have been in a way, yes.

Q. And you have made the very best bargain with the prosecution and with the Government that you can, haven't you?

A. The only bargain that I made with the prosecution is what I have already testified to—an impartial presentation of the matter before the grand jury.

(Testimony of C. W. Robnett.)

Q. Well, but, Mr. Robnett, I don't care anything about what was said right out, or anything of the kind; but I am asking about the bargain that you made with them. It was the very best one you could make, wasn't it?

Mr. GORDON.—We object to that, on the ground that there has nothing been said about any bargain having been made with anybody.

Mr. TANNAHILL.—Q. You have made the very best deal with them that you can make, haven't you?

A. I don't know as I have made any deal—no deal except what has been carried out.

Q. Well, you have done the very best with them you could, haven't you?

A. In what respect? What do you mean?

Q. In every respect—to lighten your prosecution just as much as you can? [2118—1788]

A. I have got no promises of anything from the Government any more than what has already been carried out.

Q. Now, I was satisfied, Clarence, if I asked you that question you would say you didn't, but I didn't ask you that question; I am asking you this question: Haven't you made the very best deal with them that you can?

Mr. GORDON.—I object to that, on the ground that he said he didn't make any deal.

Mr. TANNAHILL.—Q. Well, you have said you didn't make any deal.

A. I don't know as I have made any deal, except what I have just testified.

(Testimony of C. W. Robnett.)

Q. Well, you have already testified, though, that there was an agreement that it was to be presented in an impartial manner and you was to go before the grand jury and testify, and while it wasn't talked over you had it in your mind to cause the indictment of Kester, Kettenbach and Frank W. Kettenbach. Now, these deals were made, and following the whole thing from start to finish, the promises that has been made you, and the tacit understanding that you have had, and the protection that you have had from the time you was indicted, and everything of that nature: you have made the very best deal with them that you can, haven't you?

A. Well, I don't know whether you would consider that matter of my asking that the matter be presented being a deal. If you call that a deal, why that is all the deal there is to it.

Q. And they have given you the protection they have promised you right along, haven't they?

A. What protection?

Q. Any protection that they have promised you. Anything they have promised you they would give you they have given you, haven't they?

A. I don't know that I was promised any protection.

Q. Well, anything they have promised you, whether it is protection [2119—1789] or what it is, they have carried it out, haven't they?

A. I don't know as you would call that a promise.

Q. Well, they have carried out everything they promised you, haven't they?

(Testimony of C. W. Robnett.)

A. Yes; I got the matter presented before the grand jury.

Q. And any understanding you have had with them they have carried it out?

A. Well, that is all I asked, and all they stated they would try and do.

Q. Well, you asked to have Kester and Kettenbach and Frank W. Kettenbach indicted, and the Government indicted them for you, didn't they?

Mr. GORDON.—I object to that, as there is no evidence to that effect.

WITNESS.—I never asked to have them indicted.

Mr. TANNAHILL.—Q. Well, you testified before the grand jury?

A. Well, I testified to the facts; but I didn't come out and ask them to indict them.

Q. Now, you testified a while ago that you wanted it presented in a certain way, and that you had it in your mind to cause the indictment of Kester, Kettenbach and Frank W. Kettenbach, and that you thought that if you caused their indictment that it would lighten your prosecution. Now, you had that in mind, didn't you?

A. Yes, I thought—I may have had that in mind.

Q. And the Government helped you to indict those men, didn't they?

Mr. GORDON.—I object to that as not proper cross-examination.

WITNESS.—I didn't indict them.

Mr. TANNAHILL.—Q. Well, your evidence helped to do it.

(Testimony of C. W. Robnett.)

A. Well, it might have—the evidence presented before the grand [2120—1790] jury.

Q. And you told them you wanted something to say about the way that was presented?

A. Nothing more than that everything would be presented there, and I would have the privilege of going before the grand jury.

Q. Now, you and Mr. Gordon and Mr. Smith and all of you all talked over the proposition of getting these men indicted before you went before the grand jury, didn't you? A. No, sir.

Q. You simply had a frame-up to get these men, didn't you? A. No, sir.

Q. You never said a word about indicting them?

A. I never talked with Mr. Gordon until I met him in Moscow, and what the results was of the grand jury was never talked over at all.

Q. You never talked it over at all?

A. No, sir, before the grand jury was there.

Q. Well, didn't you go in and take in books there, and help Mr. Gordon work on the books—help him get up evidence against these men?

A. Not Mr. Gordon—I helped Mr. Gray.

Q. And you talked with Gray about it, did you?

A. That was simply getting up certain facts to present before the grand jury.

Q. And those facts, you were getting those together for the purpose of indicting these men, weren't you? A. Presenting the facts as they was.

Q. And that was presenting the facts as they was?

A. Presenting it to the grand jury, and let the

(Testimony of C. W. Robnett.)

grand jury take such action as it would.

Q. And you was trying to get it in such shape that the grand jury would indict them, weren't you?

A. I was trying to get the facts to come out is all.

Q. And that was for the purpose of getting these men indicted? [2121—1791]

Mr. GORDON.—We object to that. The witness has testified at least twenty times that it was not for that purpose.

Mr. TANNAHILL.—And he has testified that it was, too.

Mr. GORDON.—Well, counsel for the defense has testified twenty times that it was for that purpose, and he has been trying to put those words into the witness' mouth, and by talking fast to make it appear that he has testified to that effect. I submit that that is not the testimony of the witness.

Mr. TANNAHILL.—Well, I will submit the record in support of my claim, and take chances on the record.

Q. Now, Mr. Robnett, who else did you talk with over there in Moscow about indicting Kester, Kettenbach, and Frank W. Kettenbach?

Mr. GORDON.—I submit this is not proper cross-examination. He says he has not talked with anybody about indicting either Kester, Kettenbach or Frank W. Kettenbach.

Mr. TANNAHILL.—Who else did you talk with about it?

A. I didn't talk about indicating those people. I talked about getting the evidence.

(Testimony of C. W. Robnett.)

Q. Who did you talk with about getting the evidence?

A. The evidence that was to go before the grand jury—Mr. Smith, Mr. Watts and Mr. Gray.

Q. And who else? A. Perhaps Mr. House.

Q. And who else?

A. Why, very little I said to Mr. Gordon in regards to the evidence that I was going to state.

Q. Did they take a statement from you before you went before the grand jury?

A. Mr. Smith and Mr. Watts took a general statement of the affairs.

Q. They wrote it down, did they? [2122—1792]

A. Yes, sir.

Q. And did you sign it? A. No, sir.

Q. Now, Mr. Robnett, when did you have your next conversation with— You was testifying about something that occurred at Lewiston. When was that?

A. You mean with Mr. Smith and Mr. Watts?

Q. Yes.

A. The first conversation I had there was after I came back from Montana, about the 17th or 18th of March.

Q. Where did that take place?

A. In one of the rooms of Miles Johnson's office.

Q. And who was present?

A. Mr. Smith and Mr. Watts and myself.

Q. What was said in that conversation?

A. They wanted to know—

Q. Now, who wanted to know?

(Testimony of C. W. Robnett.)

A. Mr. Smith and Mr. Watts.

Q. Now, what was said?

A. What I had made up my mind to do, and I told them that I hadn't fully determined yet what I would do.

Q. Well, what else was said?

A. Why, we talked a little over the situation in regards to the timber transactions, and there was nothing very definitely stated that evening.

Q. How is that?

A. There wasn't anything particularly stated that evening.

Q. How long was you talking there?

A. Oh, perhaps an hour, all told—maybe longer.

Q. And what did you talk about all that time?

A. Well, the trip over in Montana, and other matters.

Q. What else did you talk about? [2123—1793]

A. The timber matter. That is practically all, except common—

Q. Well, what did you talk about?

A. Perhaps some of the affairs of the business world at that time.

Q. What did you tell them about the timber matters?

A. I don't recall just what I did tell them. I told them something about the different claims that were in question, that they thought I knew something about, but I made no definite statement.

Q. Well, now, can't you think of anything you told them? You are pretty good on remembering

(Testimony of C. W. Robnett.)

conversations you heard in the Lewiston National Bank, or say you heard.

A. (Laughing.) Well, there wasn't anything there at that time to—that is, in regards to just what I was going to testify to. I hadn't made up my mind.

Q. Notwithstanding the fact that you went there to see these men about getting protection, and notwithstanding the fact that you was under charge then, and grave charges, of embezzling \$137,000.00 from the Lewiston National Bank, that you was under several indictments in relation to timber transactions, and that you had gone there to see these men about these particular matters; yet you say there was nothing occurred to cause you to remember anything that was said?

A. There wasn't anything occurred on account of giving any evidence at that particular time, because I hadn't decided what I was going to do.

Q. Now, you say you was there about an hour. Can you mention anything that was said?

A. Nothing more than the fact that if I did go over to the Government that the statements made by Mr. Watts in Spokane would be carried out, if it was in their power; they would see what could be done in regards to that.

Q. They would see what could be done in regard to that?

A. Yes—having the matter presented—the bank matter— [2124—1794] before the grand jury.

Q. Now, did you tell Mr. Watt anything about that in Spokane?

(Testimony of C. W. Robnett.)

A. Yes; that is one of the things I spoke of up there; having the matter—

Q. You didn't testify to that in Boise, did you?

A. I don't know just exactly what I testified to in Boise in regards to that.

Q. You have thought of that since, haven't you?

A. Well, if that isn't in the testimony there that I gave, perhaps I have.

Q. Now, when did you have another conversation?

A. Why, in the next three or four days. I met them over at their room—in a room over at Mr. Smith's, in the Bollinger Hotel.

Q. Who was there at that time?

A. Mr. Smith and Mr. Watts and myself.

Q. What was said there?

A. I told them that I had decided to—practically decided to go over to the Government in the matter, and I had also spoken to Miles Johnson to represent me in the bank matter.

Q. Who told you to get Miles Johnson to represent you? A. Nobody did.

Q. Who did you first talk with about getting Miles Johnson to represent you in the bank matter?

(No answer.)

Q. I will ask you if you had a talk with any of these Government agents about getting Miles Johnson to represent you before you went to see Miles Johnson?

A. No. I may have—I don't think I had spoken to Mr. Johnson at this time. I said that I was figuring on getting him.

(Testimony of C. W. Robnett.)

Q. Figuring on getting him? A. Yes.

Q. Now, did you tell them that you were figuring on getting him? [2125—1795]

A. Why, yes, I said that I was figuring on getting him, and they said they thought that would be all right; that he would render me good service.

Q. That he was in a position to render you good service? A. That he was—

Q. They told you that he was in a position to render you good service, didn't they?

A. That his knowledge of these matters, and being Prosecuting—Assistant Prosecuting Attorney for the Government of the United States—ex-Assistant Prosecuting Attorney—they thought he would be the proper man.

Q. And that he was in a position to get you protection, if anybody could; is that right?

A. No. When the matter of protection came up they said, "We are in no position to make any statements in regards to that"; that that would be a matter that I would have to speak to my attorney about.

Q. Now, you had had a great many talks with Smith and Watt before this conversation, when it came up in regard to your employing Johnson, had you not?

A. No. There was only those two conversations there; one at Miles Johnson's office, and he was off in the timber at that time.

Q. Now, you say there were a number of conversations you had along there?

A. There were a number of conversations; right

(Testimony of C. W. Robnett.)

after that we had—oh, every once a day or thereabouts for a while we had a conversation.

Q. You were in close consultation with them for a long time? A. Pretty close, yes.

Q. And in those conversations you talked over the question of the bank matters and the timber matters and you gave them some statements in regard to the timber matters? A. Yes, sir. [2126—1796]

Q. And you would also ask them something about what protection you would be able to get? You talked about that frequently, didn't you?

A. No, sir, not frequently, after I had brought it up and found out what could be done, that is all there was. All that I wanted to know was that the matter would be presented before the grand jury.

Q. When you found that they couldn't make you a promise, or an absolute guarantee, then you went to work with them to have the matter presented before the grand jury in a certain way?

A. In an impartial way; yes, sir.

Q. And you talked that over with Miles Johnson, didn't you? A. Yes, sir.

Q. And he told you that that was a pretty good move to make, didn't he?

A. Why, in what particular? Having the matter presented before the grand jury?

Q. Yes. A. Yes; he said that was all right.

Q. And you have followed the advice of Johnson in the matter of making your deals with the Government since that time, haven't you?

A. Deals? There has been no deals made.

(Testimony of C. W. Robnett.)

Q. Well, in any particular—your transactions with the Government officials?

A. That is, the testimony and what evidence I should give in, in regards to the bank matter, has been under Mr. Johnson's advice. Of course, in the timber transactions he has refused to advise me.

Q. Well, you didn't need any advice in regard to that, did you?

A. No. I would go ahead and give my testimony.

Q. Well, you wasn't afraid of anything happening to you in regard to the timber matters, was you?

A. Well, I wasn't worrying about that particularly.

Q. But you have worried some about the bank matters, haven't you? [2127—1797]

A. I decline to answer.

Q. And you have been worrying about the bank matters right along, haven't you?

A. I decline to make any statement.

Q. And the bank matter is one of the things that has induced you to change your evidence, isn't it?

A. Along on the lines that I have stated.

Q. Well, that is one of the things that induced you to go over to the Government and testify for the Government, isn't it? A. In a way, yes.

Q. And it is practically the only thing that has induced you to do it, isn't it?

(No answer.)

Q. Tell the truth about it, Clarence.

A. Why, no, I don't know as it is.

Q. There is other things that induced you to go

(Testimony of C. W. Robnett.)

through? A. Yes. I was—

Q. But the bank matter was the moving spirit, wasn't it?

Mr. GORDON.—Let him answer the question, please.

WITNESS.—I wanted to get this matter straightened up. I am sick and tired of the proposition.

Mr. TANNAHILL.—Q. You got sick and tired of it immediately after you was charged with embezzling a large sum of money from the Lewiston National Bank, didn't you? A. Immediately afterwards?

Q. Yes.

A. No, not immediately; some little time.

Q. Well, it was very soon afterwards, wasn't it?

A. Yes, it was that summer.

Q. Now, the reason you employed Johnson was because you thought that he was in a better position to get you protection than anyone else. [2128—1798]

A. I thought he could render me the best service.

Q. Well, because you thought he stood in the best position to get you protection and obtain any favors from the Government that you could obtain? You thought that there was no one else that was able to get as many favors for you from the Government as Johnson, didn't you?

A. I knew he was in a position to render me the best service, and the protection—

Q. And you knew that he was in a position to get you more protection than anyone?

A. I didn't know just how he stood with the prose-

(Testimony of C. W. Robnett.)

cuting officials.

Q. You knew that he was Assistant United States Attorney, and assisted in the prosecution of those land cases when you testified before, and assisted in prosecuting you when you was tried and convicted?

A. Yes.

Q. For subornation of perjury, didn't you?

A. Yes, sir.

Q. And you knew that he had full knowledge of all those transactions, didn't you? A. Yes, sir.

Q. And you knew he was not on friendly terms with Kettenbach and Kester, and Dwyer, didn't you?

A. Yes, I knowed there was a certain amount of—

Q. And you knew that he would do all that he could to indict Kester and Kettenbach and Frank W. Kettenbach, didn't you?

Mr. GORDON.—I object to that as not proper cross-examination.

Mr. TANNAHILL.—Answer the question.

A. I knew that he would do anything that he could for my protection—to protect my interests.

Q. And you knew that if it was possible for him to get absolute immunity for you, that Johnson was the only one that could do it, didn't you? [2129—1799]

A. Oh, I didn't know that he was the only one. I knew that he was in a position to render me the best service of anyone, of anyone I knew at that present time.

Q. To render you the best service in the way of getting immunity for you?

(Testimony of C. W. Robnett.)

A. Oh, immunity wasn't the thing that was considered, but it was protecting my interests all along the line.

Q. Either by immunity or in any other way?

A. Yes—to protect my interests.

Q. Yes. Well, if you got immunity from these attorneys, that would be protecting your interests, wouldn't it?

A. Why, it would; but the Government men stated that that could not be done.

Q. Well, if it could be done you knew that Johnson was the only one that could do it, didn't you?

A. Well, I suppose if it could be done, he could accomplish something along that line; but I knew that it couldn't be done.

Q. And that was one thing that induced you to employ Johnson, wasn't it?

A. The proposition that caused me—

Mr. TANNAHILL.—Just answer the question yes or no.

At the request of the witness, the Reporter thereupon repeated the last question.

WITNESS.—I employed him to give me the best protection possible to protect my interests.

Mr. TANNAHILL.—Q. You employed him to give you the best protection possible to protect your interests? A. Yes, sir.

Q. And you didn't care how your interests were protected just so you got them protected, did you?

A. Well, I didn't want anything out of the way, unjust, done. [2130—1800]

(Testimony of C. W. Robnett.)

Q. Well, if he could get immunity for you by you testifying against these defendants, you was willing to do it, wasn't you?

A. No; that wasn't— It was simply to tell the facts as I knew them.

Q. Well, now, just tell us what you told Johnson regarding the protection you wanted?

A. At the first meeting, when I went to employ him?

Q. Yes.

A. Why, I went and seen Mr. Johnson and I told him that I came in to talk with him in regards to taking my matters in hand in regards to the bank matter and the timber matters, and he stated, "Well," he says, "now, I can handle the bank matter, but I can't advise you at all in regard to the timber transactions; but before I will make any statement," he says, "I want you to tell the facts as they are, and," he says, "you come down this evening and we will go over the whole matter together in the office, where everything is quiet."

Q. And was anything else said?

A. I told him all right, I would so. That evening I went down and we talked the whole situation over, and I asked him along those lines, if the Government could grant any protection, and he says "No," and I told him what I had asked, for the bank matter to be impartially presented, and he said that was all right and that was as far as they could go, and he said if I could get that done it was accomplishing a great deal.

